

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of the hearing of submissions on Proposed Plan Change 1 (and Variation 1) to the Waikato Regional Plan

TOPIC 3

**BY FEDERATED FARMERS OF NEW ZEALAND INC,
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(“FEDERATED FARMERS”)

Submitter with ID: 74191

To WAIKATO REGIONAL COUNCIL

**STATEMENT OF PRIMARY EVIDENCE OF IAN FRANCES
MILLNER FOR FEDERATED FARMERS ON HEARING TOPIC 3**

5 July 2019



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1. EXECUTIVE SUMMARY

Farm Environment Plans

- 1.1 A key focus of my evidence is the Farm Environment Plans (“FEPs”). I am firmly of the view that the FEPs will be where the greatest gains are made and that the focus ought to be on obtaining FEPs as efficiently and effectively as possible.
- 1.2 In general, I support the proposal in the section 42A report for structuring Schedule 1 around Good Farming Practices (“GFP”) principles and the proposed process for certifying, reviewing and grading FEPs. In my opinion, it is important that the FEPs are able to be tailored and appropriate flexibility is provided for farming activities e.g. to respond to seasonal or economic events.
- 1.3 The Hearing Panel has raised concerns about FEPs as permitted activities and has raised the possibility of a more structured FEP for permitted activities that involves less judgement. In my opinion, the option for obtaining a FEP as a permitted activity ought to be retained. I see real merit in the Certified Industry Scheme (“CIS”) proposal. I am firmly of the view that the CIS will have greater leverage over an individual farmer than Council ever will and that that will result in better water quality outcomes.
- 1.4 The evidence from other parties (Fonterra and Miraka) has been that they will not establish a CIS unless it is a permitted activity. In my view, the benefits that will arise from the CIS process are a strong reason for the Hearing Panel to find a way to make the permitted activity for FEPs work.
- 1.5 My view is that FEPs can be prepared as permitted activities and that Schedule 1 (with amendments proposed by Mr Eccles) is suitable for this purpose. However, in the event that the Hearing Panel disagrees, I have assisted Federated Farmers to draft a more structured and specific Schedule 1A that could be used for permitted activity FEPs.

Nitrogen Reference Point

- 1.6 I consider that the section 42A report has taken a pragmatic approach to the Nitrogen Reference Point (“NRP”) and issues associated with Overseer.

There are some additional issues with the NRP and the reference years that I consider ought to be addressed, including providing for farmers who do not have sufficient records for the reference years or for whom the reference years do not reflect their farming operation.

2. INTRODUCTION AND ISSUES

2.1 My full name is Ian Francis Millner. I am a Senior Land Management Adviser at Rural Directions Advisory Services. A full description of my qualifications and experience is contained in my statement of evidence on Hearing Topic 2 dated 3 May 2019.

Code of Conduct

2.2 I confirm that I have read the Environment Court's Code of Conduct for Expert Witnesses as set out in the Environment Court's Practice Note 2014, and I agree to comply with it. I confirm that the issues addressed in this statement of evidence are within my area of expertise, except where I state that I am relying on the evidence of another person. I have not omitted to consider material facts known to me that might alter or detract from the opinions expressed.

Scope of Evidence

- 2.3 My evidence will address the following matters:
- a. Schedule 1 for FEPs – my views of FEPs obtained as part of a resource consent and FEPs obtained as part of a permitted activity.
 - b. The NRP and some issues that I consider ought to be addressed to provide for a five year rolling average, for farmers who do not have sufficient records for the reference years and for farmers for whom the reference years do not reflect their farm system.
 - c. Stock exclusion and setbacks – I confirm my agreement with Dr le Miere's analysis and assumptions regarding fencing costs and costs associated with various setback distances and riparian planting.

3. SCHEDULE 1

- 3.1 The section 42A report for Block 3 proposes significant changes to Schedule 1. The report by Rob Dragten dated 12 June 2019 and included as part of the section 42A report explains the rationale for the changes.
- 3.2 I agree with some of the principles behind the changes, including:
- a. There ought to be a focus on outcomes as opposed to the process.
 - b. FEPs ought to be an iterative process with continuous improvement or refinement over time, as opposed to a one off process.
 - c. Management actions have a critical role to play in improving water quality and infrastructure investment should not be preferred over changes in management practices (which are likely to be better “bang for buck”).
 - d. The FEP regime ought to be risk based and able to be monitored and enforced. I support the proposed risk grading approach to monitoring and compliance as a pragmatic means of focusing resources where they are most needed.
- 3.3 In terms of the FEP process,¹ in principle I support the proposal that FEPs are able to be prepared by farmers and reviewed by a CFEP. Subject to my comments below, I consider that a review manual (if it is in the form of guidance as to practices and actions to achieve GFPs) could be helpful to assist the CFEP. In principle, I support the proposal for a 12 month review and level of confidence grading, with review frequencies determined by the grade. I support the approach of not listing detailed FEP actions as a consent condition but instead using a review process to review consent conditions if farm enterprises are consistently rated with a “D” grade.
- 3.4 I do not consider that it is appropriate to list the detailed actions in a FEP as conditions of consent because that will result in significant constraints and will not provide the flexibility needed to farm. By its nature, farming needs to be flexible to respond to changing environmental and economic conditions and to

¹ Described on page 57 of the Block 3 section 42A report.

respond to unforeseeable events. This is not possible if a farmer is being rigidly managed to detailed actions and practices as part of consent conditions.

- 3.5 Such an approach would also likely stifle innovation and the adaptation needed to improve water quality. As the Panel has heard from many farmers, there is a degree of trial and error in some mitigations. A farmer might fence off a waterway only to discover an unintended consequence and decide that an alternative mitigation is more appropriate. If a change to consent condition (as opposed to a change to FEP) was required, the incentive to identify and pursue these alternative and superior actions would likely be stifled.
- 3.6 In terms of the changes in the wording and structure of Schedule 1,² in principle I support the approach of clearly setting out the relevant objectives and principles for the preparation of FEPs.
- 3.7 I routinely prepare and review FEPs for farms all around New Zealand, including under regional plans for the Hawkes Bay (Tukituki Plan Change 6), the Auckland Unitary Plan, Rotorua Plan Change 10, Horizons One Plan and Gisborne District Council's Freshwater Plan. In my experience, the regimes that are most appropriate are those that have a clear framework for FEPs e.g. by division into sections (as proposed through Parts A and B in the recommended changes to Schedule 1) and have clear objectives and/or principles around which to structure FEP actions/practices and the associated environmental outcomes.
- 3.8 It is critical to get the framework right to ensure that tailored and flexible FEPs are achieved whilst at the same time providing regulatory certainty and consistency. In addition to striving to achieve this balance for farms obtaining an FEP through resource consent, I understand that an issue that the Hearing Panel is currently grappling with is whether FEPs can be a permitted activity if judgement is required in preparing them.
- 3.9 I have reviewed Mr Eccles' evidence and his proposal for two separate schedules depending on whether consent is required (and in the event that

² Described on page 72 of the Block 3 section 42A report.

the Hearing Panel decides that Schedule 1 as recommended contains too much judgement to be a permitted activity). I wish to record my opinion that Schedule 1 as recommended does not contain too much judgement or flexibility to be used as a permitted activity.

3.10 Through my work in other regions I have prepared and reviewed FEPs under permitted activity regimes, and those regimes have the same (if not more) judgement and discretion as what is proposed for PC1. In my opinion, the CFEP is the person most qualified and experienced to exercise that judgement. The CFEP will be the person who walks the farm with the farmer. They will also be the person with the experience and qualifications to make the judgement calls. In contrast, a council consenting officer is unlikely to spend the time on the farm (or even visit the farm, particularly if there are thousands of consents to process). They are unlikely to have the same experience and qualifications as a CFEP. Accordingly, my view is that requiring a resource consent is not likely to add anything to the process or add any more objectivity (or skill) to the assessment.

3.11 However, in the event that the Panel does not agree with these views, I set out below my views on Schedule 1 as it is proposed to be used for a FEP obtained under resource consent (but my view remains that this schedule could equally apply to a permitted activity) and my views on Schedule 1A as it is proposed to be used for a FEP prepared as a permitted activity.

FEP as part of a resource consent

3.12 In this section I set out my views on Schedule 1 as recommended by the section 42A report. I consider that with some amendment, Schedule 1 is appropriate for an FEP prepared as part of a controlled activity resource consent (and, for the reasons explained above, for a permitted activity).

3.13 How I would envisage Schedule 1 operating is that a document would be prepared that essentially has three sections:

- a. Section 1 - property or enterprise details (essentially containing the matters listed in Part C, paragraph 1 of Schedule 1).

- b. Section 2 – farm map showing farm details, critical source areas and actions/practices (essentially illustrating all of the matters listed in Part C, paragraph 2 of Schedule 1).
- c. Section 3 – the overall risk assessment (Part C, paragraph 2).
- d. Section 3 – an assessment of the required actions under each of the management areas in parts 3a to 3f by assessing the GFP principles and addressing the matters in Part C, paragraph 5 of Schedule 1 (e.g. the detail and content of actions that reflects the scale of environmental risk posed by the activity).

3.14 I set out my view below on each of the sections contained in Schedule 1, as amended by Mr Eccles.

New Part B – purpose of a FEP

3.15 In his track changes to Schedule 1, Mr Eccles proposes to insert a new Part B, which sets out the purpose of a FEP. In my view, that section is important for setting the overall purpose of a FEP (which is to manage the discharge for the four contaminants from farms using GFP). It also provides overarching guidance for CFEPs in preparing FEPs by providing a framework for assessing mitigations by reference to:

- a. Sub-catchment characteristics
- b. Proportionality – both in terms of the scale and significance of the discharge and the industry sector's contribution to the water quality issues.
- c. Resources reasonably available to the farm enterprise.

3.16 In my opinion, establishing this framework at the start of the FEP is critical for helping the CFEP to choose the appropriate action (as I explain below, for any risk or critical source area there are likely to be many potential actions), set the timing or timeframe for the action and to prioritise the actions (it is very unlikely to be possible to do everything at once but by prioritising actions the most important ones can occur first).

- 3.17 In my view, Mr Eccles' proposed framework sets out the matters that are relevant for this assessment. For example, there is unlikely to be much benefit in focusing mitigation actions on reducing nitrogen if the issues in the sub-catchment and for the sector are E coli (this does not mean that no nitrogen mitigations are proposed but it does help to focus resources and timing of actions towards E coli mitigations).
- 3.18 Likewise, there is unlikely to be much benefit in focusing mitigations that require infrastructure investment if the farmer does not have sufficient resources for such investment. This does not mean that the farmer is not required to improve practices and adopt GFP. However, it might mean that the focus of the actions are on management changes and/or a longer timeframe is adopted for infrastructure changes or more important infrastructure (e.g. fencing) is prioritised over less important infrastructure (e.g. feed pad), particularly where there are alternative management actions that could be adopted.
- 3.19 In addition, my view is that this framework and reference to the Catchment Profiles is critical for the CFEP in undertaking an assessment of the detail and content of actions to reflect the scale of environmental risk posed by the activity. This is the assessment required in Part C, paragraph 5 of Schedule 1 (as amended by Mr Eccles) and in my view it is not possible to assess this without understanding the sub-catchment characteristics.
- 3.20 As I explain later in my evidence, this does not mean that detailed sub-catchment forensics need to be carried out. But it does mean that the information that Council currently holds (such as short term targets, state of environment monitoring etc) needs to be collated and retained in one place where it may be accessed by the CFEP (most likely the online portal).

Overall risk assessment

- 3.21 I consider that there needs to be an overall risk assessment at the outset of the FEP, in addition to the risk assessment in the context of individual GFP principles and land management areas. I consider that it is important to have an overall understanding of risk because it enables the development of a consistent line of logic that sets the relative priorities and objectives for the

FEP to achieve. It also provides assurance to Council that there is consistency in approach and that the overall activity has been objectively considered, as opposed to solely considering its parts.

3.22 I support Mr Eccles' proposed additional wording in Part C, paragraph 3, of his track changes to Schedule 1. This consistent with the wording of Schedule XXII of the Tukituki Plan Change 6 (which applies to FEPs in that area).

3.23 An additional change to Part C is to include a new paragraph 2h which requires land that is cultivated to be marked on the farm map. This is similar to the approach in the Appendix N of the Southland Regional Plan (which applies to the preparation of FEPs).

Objectives and principles

3.24 Mr Eccles recommends that the objectives in Part C of Schedule 1 are deleted. I agree with his recommendation. From the perspective of preparing a FEP, my opinion is that the objectives do not add anything. What is important is that Schedule 1 clearly sets out the management areas and the GFP principles.

3.25 I agree with Mr Eccles' view that the objectives are essentially a duplication of the principles. In my view, if the objectives were deleted that would provide greater clarity for a CFEP because it would focus attention squarely on the GFP principles as opposed to requiring an additional assessment against objectives (which will potentially create confusion or ambiguity, to the extent the objective is worded differently from the GFP principles).

3.26 In the event that the Hearing Panel considers that the objectives ought to remain, I agree with the changes proposed by Mr Eccles to the wording of the objectives.

3.27 I am concerned that the general theme of the objectives is to "minimise" the loss of contaminants. This is used as the objective for many of the management areas. For example, in Objective 1 farming activities are managed according to GFP to *minimise* the loss of contaminants and Objective 4 requires the losses of sediment, microbial pathogens, phosphorous and nitrogen to waterways to be *minimised*.

- 3.28 In my opinion, this creates a lot of subjectivity about the level to which the loss of contaminants is to be reduced and is open to interpretation. At one extreme, losses are minimised where there are zero discharges. At another extreme, any reduction (no matter how small) could arguably result in the discharge being minimised (or no reduction may be required if the assessment is that the discharge is already minimised). While I acknowledge that some parameters around this are intended to be provided through the principles for each objective, I can foresee a situation where a CFEP proposes one set of scenarios to reduce contaminant discharges but a consenting officer considers that this does not go far enough to “minimise” the losses.
- 3.29 In the absence of specific standards about the level to which losses must be minimised (which itself would likely turn on the impossible task of measuring the level of diffuse discharge of each contaminant and allocating all contaminants to a property level), there is uncertainty about what level of reduction is acceptable.
- 3.30 For these reasons I consider that the word “minimise” ought to be replaced with “manage and/or reduce” as proposed by Mr Eccles. In my view, the words “manage and/or reduce” provide better clarity that the assessment that is required is against GFP and where this is already met (or even exceeded) then discharges are managed and where it is not met, there are to be managed reductions to achieve GFP. This also provides for a reasonable assessment of the factors set out in Part B of Mr Eccles’ changes to Schedule 1, including the issues for the sub-catchment, proportionality and resources. In contrast, the word “minimise” suggests that there is no assessment of these matters because, for example, it does not matter what the water quality issues are, losses of contaminants just need to be minimised.
- 3.31 An exception to this is where the use of the word “minimise” is qualified in some way. I do not have the same issue with Objective 2, which requires nutrient losses to water to be *minimised* while *maximising* nutrient use efficiency. This efficiency assessment provides some objective parameters to guide the CFEP and consenting officer as to what “minimising” means.
- 3.32 I note that this is consistent with changes recommended on page 51 of the Block 3 section 42A report. The proposal is that the definition of GFP is

amended to be the practices and actions that “manage, reduce ~~or~~ and minimise risk of contaminants entering a waterbody.” I support Mr Eccles’ recommendation that the word and is reinstated so that it reads “manage, reduce and/or minimise”.

3.33 I also note that this definition is focusing on risk as opposed to the losses themselves (whereas losses are the focus of the objectives referred to above and principles referred to below). In my opinion, assessing risk and minimising risk is different from assessing losses and minimising losses and for that reason, I am comfortable with the use of the word “minimise” in the definition of GFP, as long as the words “and/or” are included.

GFP Principles

3.34 The GFP principles adopted in the recommended changes to Schedule 1 are largely based on the Good Farming Practice Action Plan for Water quality 2018. I was not involved in the development of that document but I have reviewed the background to that work provided in Dr le Miere’s evidence and his track changes document showing how the wording of the GFP principles have been amended by Mr Dragten.

3.35 In my view, some changes to the GFP principles are needed to provide greater clarity and to ensure that the focus is on an assessment of resource use efficiency (as opposed to minimising all contaminants everywhere). In my view, a resource use efficiency assessment is consistent with the objective of PC1 for the first 10 years, the staged approach and on providing for economic and social wellbeing whilst achieving the desired water quality improvement. Having read Dr le Miere’s evidence, I consider that the changes recommended by Mr Eccles are consistent with the approach envisaged by the GFP governance group, in terms of prioritising and refining the GFP principles for each region.

3.36 For the reasons explained above, I consider that the word “minimise” ought to be replaced with “manage and/or reduce.” The exception to this is where the word “minimise” is qualified by an efficiency assessment. For example, in Principle 23, irrigation systems are required to *minimise* the amount of water needed *to meet* production objectives. In my view, meeting productive

objectives provides objective guidance as to the level of water that represents the required “minimum.”

- 3.37 In my view, the words “where agronomically appropriate” need to be added to the end of Principle 3. These words are contained in the 2018 GFP action plan. I consider that these words are essential for the practical application of this principle as they limit its scope to areas of agronomic relevance (as opposed to areas not farmed or protected e.g. wetlands). Without these words the principle is very open to discretion and the practices needed to minimise losses of contaminants to maintain soil structure will mean different things to different people. In my opinion, without these words, a consenting officer would be forced to apply a subjective evaluation to apply this principle.
- 3.38 In my view, the word “transport” needs to replace the word “losses” in Principle 10. This is consistent with the equivalent principle in the 2018 GFP action plan, which focuses on transport of the three contaminants to waterbodies. I consider that transport has a different connotation than losses and it is the transport of contaminants that is relevant for overland flow (as opposed to losses, which might be overland but also might be through groundwater).
- 3.39 I consider that the word “possible” in Principle 12 ought to be replaced with the word “practicable.” In my opinion, it will almost always be possible to exclude from waterways. The critical assessment will always be whether it is practical. In my view, the two assessments are different, with an assessment as to what is practicable depending on factors such as resources, terrain, weather etc (it may not be practical to fence a stream if it is known to flood regularly).
- 3.40 I also consider that Principle 13 ought to be deleted. It is contrary to Principle 12 (which allows for alternatives to stock exclusion). It would not provide for many of the farmers who have presented during the Block 2 hearings (including the Hill Country farmers) and explained how they cannot meet the Schedule C requirements. As explained in my Block 2 evidence, the real merit in FEPs is the ability to tailor them to the particular scenario and this ought to apply to the stock exclusion requirements (where it is not reasonable or where more appropriate alternative mitigations exist).

Assessing actions and practices

- 3.41 Developing a FEP involves considering each management area and identifying the critical source areas and flow paths within each. For most (if not all) critical source areas there will be a range of potential mitigations or actions to reduce contaminants. Many of them will be mutually exclusive. They may not be easy to trade off against each other e.g. one mitigation may reduce phosphorous more than nitrogen or reduce E coli but not nitrogen, but without guidance as to which of these contaminants is a priority or issue, it is difficult to evaluate the mitigations or actions against each other.
- 3.42 As explained in my Block 2 evidence, the real benefit from FEPs is through the development of actions that are tailored to the location and farm system, and are able to adapt as conditions change. I have set out an example in **Annexure IFM1** of how actions may need to be adapted depending on the location and farm system. I consider that Schedule 1 (as amended by Mr Eccles) provides for such an outcome.
- 3.43 As explained above, my view is that it is important that Schedule 1 provides a framework for evaluating actions and assessing timing and priority. Timing and prioritisation are important to recognise that there are limited resources, both financial and in terms of physical resources or capability. For example, there may be waitlists to get fencing contractors in or fencing may be weather and season dependent, as well as expensive, so it cannot all be done in year 1. However, the real value in the CFEP in this example is in assessing and prioritising fencing works to areas posing the greatest risk or having the greatest need (as identified by a formal risk assessment).
- 3.44 These issues may be able to be partly addressed by having an implementation or guidance document sitting outside PC1 (and called a “review manual” in Mr Dragten’s report). Ideally these types of documents should be prepared with industry in order to ensure relevance and acceptance. It is not unusual for these documents to be used to complement a plan. The Tukituki plan (PC6) has required the development of a set of GMPs (developed with industry) and a procedural guideline to clarify consenting process and management. Similarly, Canterbury has developed a matrix of good management to guide the preparation of FEPs. An important aspect of these documents is that they have a review process that provides for updates and advancements in science so that they can support continuous improvement.

3.45 However, my opinion is that a review manual is no substitute for the Catchment Profiles proposed by Mr Eccles and referred to in his proposed Part B of Schedule 1. I understand that WRC is currently working on developing catchment profiles with the purpose of assisting farmers who are wanting to prepare FEPs. I note that Dr McLay stated to the Hearing Panel on 18 June 2019 that WRC was doing this so that farmers who want to get ahead of the game are able to prepare FEPs. I agree with WRC that the development of catchment profiles would assist the preparation of FEPs.

Catchment Profiles

3.46 I understand that FFNZ's submission is that Catchment Profiles should be developed in accordance with a method under PC1 and that amendments to reflect that (in terms of changes to the policies, methods and Schedule 1) are proposed in Mr Eccles' Block 2 and 3 planning evidence. I agree with that proposal.

3.47 From a farm planning perspective, understanding the current water quality state and short term targets for each sub-catchment, the sources of those contaminants, any catchment management plans, information about adjoining sub-catchments or interrelationships and information about hotspots or issues in the sub-catchment, would be invaluable for preparing FEPs. This information does not need to be to the level of detailed sub-catchment forensics (which, for almost all of the sub-catchments, is currently not possible). What I envisage is that the information is treated as a living document and added to as more becomes available. The act of simply collating in one place all consents issued for point source discharges or state of environment monitoring or the pie charts Jacobs prepared for Horticulture NZ (showing sector contribution towards contaminants in each sub-catchment), for example, would be progress.

3.48 I understand that WRC already has a lot of this information but it is a matter of collating it in one place. The online portal that WRC is developing would be the ideal conduit for this information.

3.49 I consider that the FEP should take into account the contaminants that are an issue and the level of risk to achieving the short term targets posed by the

farming activity. I consider that proportionality is an important aspect of managing farming activities. I also consider that the resources reasonably available to the farm enterprise are a relevant consideration, particularly when assessing the timing and priority of actions. In my experience, there is no point in proposing gold plated mitigations and without appropriate staging, if they will simply put the farm enterprise out of business in the first year. Likewise, there is no point in proposing significant infrastructure change if the same (or better) environmental outcome can be achieved through farm management change.

Dispute resolution provision

- 3.50 Mr Eccles has proposed a dispute resolution mechanism at Part F of his amendments to Schedule 1. I consider that it is appropriate to anticipate that disputes might arise about the approval of, amendments to or auditing of FEPs. I consider that having a reasonable dispute resolution process would provide certainty for all parties. From a farm planning perspective, it is likely to appeal to CFEPs who will have greater certainty (and potentially less risk) in preparing FEPs if there is clarity about how disputes will be dealt with.
- 3.51 I am aware of the attempted adoption of a dispute resolution process in Canterbury in response to disputes arising from the preparation and auditing of FEPs. I understand that there were issues involved in that, partly because there was a lack of clarity as to what would be appropriate and it was a retrospective attempt to fill a gap in the plan provisions. I consider that it would be more efficient to be proactive about this and address it now as opposed to waiting for issues to arise.

Control over content of FEPs

- 3.52 The final matter I wish to address in respect of FEPs prepared as part of a controlled activity consent is Council's control over the content of FEPs.
- 3.53 My reading of the controlled activity rule suggested in the section 42A report for Block 2 (Rule 3.11.5.2A) is that it is proposed that WRC will have control over the content of FEPs (as was proposed in the notified version of PC1). In my experience, this means that while a CFEP may propose a programme of mitigations, the council could then propose that the timing or prioritisation is

changed or that additional or different mitigations are adopted. In my view, the extent of council's control over the content of an FEP should be limited to applying a technical audit.

- 3.54 My experience working with councils is that they are not well equipped to make the kinds of evaluative assessments involved in developing the FEP (and even less equipped to do it at the scale envisaged by the number of consents and timeframe for processing them that PC1 is likely to generate). This is very unlikely to be a desktop exercise. In most cases, reviewing the proposed actions would require a visit to the property. It is also not a case of simply saying a greater reduction in one contaminant must be achieved or that an area of intermittent ponding must be fenced or that a greater setback along a stream must be provided. It requires an understanding of the farm system, the location (e.g. soils, climate etc) and the critical source areas and flow paths as well as the interrelationships.
- 3.55 Accordingly, my view is that any Council control over the content of FEPs should be limited to technical matters such as review of the design and implementation of any soil conservation program of works where an objective risk assessment by the CFEP has identified that as the appropriate action for a property. In such a situation, I consider that Council would have technical expertise in erosion control and would therefore have the technical capability to make informed comments on specific details such as whether the right tree is proposed to be planted in the right place.
- 3.56 I am concerned that WRC will not have the resources to send consenting staff to farms and nor will they have the skills and expertise to make a better evaluative assessment than the CFEP. In these circumstances, there does not seem to be a reason for council to have control over the content of FEPs (save for the technical matters I refer to above).
- 3.57 If Council is to have control over the content of FEPs, I consider that such control would be best assisted (for Council, farmers and the CFEP) if greater guidance was provided about the levels of reduction required (as opposed to a requirement to minimise losses), for example, as explained above (i.e. through Mr Eccles' amendments to Part B of Schedule 1). I also consider a

reasonable dispute resolution provision would assist with any disputes that arise as to the content of FEPs.

FEP as part of a permitted activity

- 3.58 Based on questions that have been asked during the Block 2 hearings, I understand that the Hearing Panel has raised some concerns about FEPs prepared as a part of a permitted activity. My understanding is that the Panel is concerned that Schedule 1 involves subjective judgement and that may not be appropriate in as part of a permitted activity.
- 3.59 In the notified version of PC1, FEPs were able to be prepared as part of a CIS as a permitted activity. I am also aware that other parties have proposed that low intensity farming activities ought to obtain a FEP. In its submission on PC1, FFNZ proposed (in amendments to Rule 3.11.5.2) that farms over 20ha prepare a Simplified FEP. In my view there is merit in providing a permitted activity pathway for FEPs.
- 3.60 I have heard the evidence presented during the Block 2 hearings by Fonterra and Miraka as to the benefits of a CIS (including things like coaching, coordinating, organising farmers, assisting them to prepare FEPs and emphasising what they need to do to be lawful). I have also heard them say that they are unlikely to prepare a CIS unless FEPs are able to be prepared under a CIS as a permitted activity.
- 3.61 I can see merit in the CIS and permitted activity pathway from industry, farmer and council perspectives. From the industry perspective, it potentially provides them with a stronger lever to terminate supply agreements with farmers who fail to obtain and comply with a FEP. From a farmer perspective, it gives them the option of dealing with their industry body as opposed to having to deal with the council and obtain consent. From the Council's perspective, it significantly reduces the number of resource consents that need to be processed, provides some standardisation and consistency in terms of FEPs prepared and assists with monitoring and reporting of information.
- 3.62 In my opinion, the greatest benefit of the CIS is the strong incentive for the farmer and his/her financier to make sure they are compliant with the terms of the CIS (i.e. the FEP) in order to ensure supply. The banks are concerned

with compliance with environmental regulation (all of the banks are developing pricing differentials based on compliance risk) but, in my experience, they are just as concerned (if not more) with security of income i.e. the ability to guarantee ongoing supply to the milk company or lamb to the processors. In my view, the banks will ultimately drive adoption of FEPs and improvement in water quality faster than any regulation.

3.63 For the banks, non compliance with regulation or supply agreements by their debtor farmers is not an option. I am firmly of the view that the CIS will have greater leverage over an individual farmer than the Council ever will (simply because farmers will respect the opinion of their peers and because there is a contractual relationship and strong commercial incentive to listen and comply).

3.64 If the Hearing Panel considers that there is too much discretion in Schedule 1 for it to be a permitted activity (and for the reasons above my view is that there is not too much discretion), then I would support adding more prescription into the schedule for the purposes of a permitted activity rule (in order to ensure a permitted activity pathway). In my opinion, it will not be possible to completely remove judgement or subjectivity because that is inherent in any risk assessment. However, it is possible to reduce and manage this to the point where a clear “line of logic” within any FEP is developed.

Schedule 1A

3.65 I assisted with the drafting of Schedule 1A that is attached to Mr Eccles evidence. An initial draft was prepared by Federated Farmers’ policy staff in consultation with several key industry groups (although time was not available to consult more widely or for them to respond in detail). I then reviewed it and amended or added to it based on my experience and my review of the industry FEP guidance documents referred to at paragraphs 64 and 65 of Dr le Miere’s evidence.

3.66 I consider that it is appropriate to adopt Part B (purpose of FEP) for the reasons explained above in the context of Schedule 1. While Schedule 1A is more objective and specific compared with Schedule 1, I consider it appropriate and necessary to provide a framework for assessment, where there the answer is

not simply a “yes” or “no” (and the reality is that such an answer or assessment is likely to be impossible for all aspects of many (if not all) FEPs).

- 3.67 As with Schedule 1, I consider it appropriate to include a new paragraph 2h (in Part C) which requires land that is cultivated to be marked on the farm map. This is similar to the approach in the Appendix N of the Southland Regional Plan (which applies to the preparation of FEPs).
- 3.68 I also consider it appropriate to require an overall assessment of risk up front (paragraph 3 of Part C), for the reasons explained above in the context of Schedule 1. I consider that any FEP would benefit from this overall and holistic assessment and that it is not appropriate to constrain or direct this (in the way that has been achieved with the practices set out under each of the principles, for example).
- 3.69 I also consider that the deadlines for the practices ought to be the dates set in PC1, where they relate to forward looking infrastructure (such as fencing, for example) and where they are management actions that must be complied with immediately and on an ongoing basis (for example, in relation to the application of fertiliser), they are complied with from the date of the FEP. This is provided for in the amendments to paragraph 4 of Part C.
- 3.70 From section 3a onwards, Schedule 1A sets out the objective, principles and then actions or practices associated with each principle. For the reasons set out above, I consider that the objectives ought to be deleted and the principles should just be detailed under each management area, with practices then listed under principles.
- 3.71 For each of the actions, the intention is to keep the responses to a yes or no or not applicable. However, for several of them more description will be required. For example, it is anticipated that a map is attached that identifies critical source areas, actions and other information. Therefore, the answer to questions like “prepare and maintain a map at a scale that clearly shows the

matters listed in paragraph 2 above”³ will be a “yes” as well as attaching a map providing this further detail.

- 3.72 It is anticipated that for some of the questions, the further detail can be listed in the box immediately below the actions. For example, the answer to the question “identify the key characteristics of the farm system, as shown on the map, and list them below”⁴ can be included in that box.
- 3.73 It is anticipated that for some of the questions, a management plan will need to be prepared and attached to the FEP. For example, this is required by actions like “develop and retain management plan for maintaining” drains and riparian planting.⁵
- 3.74 For other actions, I anticipate that a CFEP might need to list the actions, timing and priority of them at the end of the FEP. This will primarily relate to any actions that are not covered by the actions/practices listed in Schedule 1A but that the CFEP considers appropriate.
- 3.75 There are also areas in [*square boxes*] in certain actions where the intention is either that the standard is specified by the CFEP or a standard could be developed through expert caucusing (recognising the limited time to prepare Schedule 1A and very limited opportunity to obtain input from industry experts).
- 3.76 There is then a section under each of the actions which lists the records to be retained in respect of each principle. These are intended to provide confirmation of compliance with the actions.
- 3.77 Schedule 1A is rigid and will not be suitable for many farms. However, in my opinion it may be suitable for farmers with reasonably standardised systems, on reasonably flat country (who have either complied with stock exclusion or can comply) and with no other unusual environmental, geographical or other

³ Action 1 under Principles 1 and 2.

⁴ Action 2 under Principles 1 and 2.

⁵ Action 20 under Principles 12 and 13.

features. This may be the case for Fonterra suppliers in the Waipa or middle Waikato FMUs, for example.

- 3.78 There may be farmers who can comply with almost all aspects of Schedule 1A, except for one or two. Stock exclusion is a good example. Depending on the final wording of Schedule C, there may be a dairy farmer who can comply with all aspects of Schedule 1A except for stock exclusion, if intermittent waterways are required to be fenced or if waterways on slopes between 15 to 25 degrees are to be fenced (and it is not practical). In my opinion, it would be much more efficient if such a farmer prepared a FEP that complies with Schedule 1A and it is only the stock exclusion proposal that requires consent and over which Council has control. From a farm planning point of view, I do not consider there to be any additional benefit in requiring the entire FEP to be reviewed if it is prepared in accordance with Schedule 1A (unless the farmer wishes to go down that path and have the whole FEP tailored).

4. NRP

- 4.1 Objective 3 of the recommended changes to Schedule 1 requires farmers to farm in accordance with the nitrogen management requirements of PC1. The principles then require them to farm so that they do not exceed their NRP or so that they do not exceed the 75th percentile.
- 4.2 Mr Eccles proposes that principle 9 is amended (and he has called it principle 9b) so that farmers have until 1 July 2026 to reduce to the 75th percentile (consistent with Rules 3.11.5.2A, 3 and 4). I support this amendment and consider that without it there is inadequate guidance to the CFEP as to when the 75th percentile is required to be met (and an argument that it is required to be met from the date of the FEP).
- 4.3 This is particularly important in light of the grading system proposed by Mr Dragten because in the absence of Mr Eccles' amendment, the farm would fail to meet this requirement and could be receive a D grade. This would not be appropriate in circumstances where it will likely take time to implement the changes needed to reach the 75th percentile and the intention of PC1 was to provide a reasonable transition for those farmers.

- 4.4 I have reviewed Mr Dragten's proposal for how a CFEP would assess a level of confidence that a NRP is being complied with.⁶ I support the proposal to provide a degree of flexibility as opposed to requiring rigid adherence to an Overseer number (which is a modelled number, carries with it a margin of error and is prone to changing with version changes and through no change to the farm system). My understanding of Mr Dragten's proposal is that this could be achieved by the CFEP looking at actions (such as stocking rates), running the farm through Overseer or any other process that would provide confidence the NRP principle is being met.
- 4.5 Mr Dragten identifies the issues with the 75th percentile as being that there needs to be a "hard line" because the approach is different – reductions are required. I agree with Mr Dragten that there does not appear to be a way of achieving this without referring to Overseer and one way to overcome the version change issue is to lock the 75th percentile value into a particular point in time (then consider confidence that the reductions are achieved). If this is the approach that is adopted I consider it important that a farmer has the opportunity to request a review of the 75th percentile number and/or the ability to use a model other than Overseer (or measured nitrogen leaching). Such an approach would provide for innovation and provide for Overseer version changes (or other models or measured data) that recognise innovation.
- 4.6 In addition, if a party was to put forward a reasonable alternative, I would support that.
- 4.7 The section 42A report recommends that the definition of the five year rolling average is deleted on the basis that Mr Dragten's proposal does not rely on it. I do not support that. In my view, it is important to retain the five year rolling average to provide for those farmers who are relying on Overseer to demonstrate compliance with the NRP. A five year rolling average concept is important to provide the necessary flexibility for farmers to farm the good seasons as well as the bad. For example, N losses from a bull beef farm might increase during drought due to an inability to send stock to the works (due to an oversupply in cull cows) and needing to keep them longer. A wet summer

⁶ Pages 66 to 67 of the Block 3 Section 42A report.

might mean more grass and a change to stocking policy or a change in the wool pay out might mean a change to sheep:beef ratios. Many of these might be seasonal and one off and offset in future years (so on an overs and unders basis, the NRP has not changed when averaged across five years).

- 4.8 I have reviewed the amendment proposed by the Officers at page 49 of the Block 3 section 42A report and support that definition.
- 4.9 An issue that I anticipated Mr Dragten addressing in his report (but which he has not addressed) is a situation where farmers do not have sufficient records to establish a NRP. This has been raised by numerous farmer submitters during the Block 2 hearings. It is likely to be reasonably common where farms were sold after the reference years. It is likely to be a particular issue for farms that were sold after (or during) the reference years and before PC1 was notified. Following notification of PC1, there was greater knowledge of the reference point approach but in my opinion there will still be many farmers who will have bought land without realising the need to obtain information to calculate a NRP.
- 4.10 I consider that some form of review process ought to be established to enable farmers to establish a reasonable baseline for what the nitrogen footprint would have been during the reference years. I understand that Bay of Plenty Regional Council is developing policy guidance for something similar for Plan Change 10 to provide for farmers that do not have a Rule 11 benchmark (which is needed to calculate their 2032 nitrogen allocation and managed reduction targets). I understand that they are considering factors such as how much of the information is available to calculate, extrapolate or reasonably estimate a Rule 11 benchmark.
- 4.11 In my opinion, WRC could develop something similar for PC1 and along the lines of Mr Dragten's proposal for farms that are required to provide confidence that they have not exceeded their NRP i.e. it might not rely on Overseer but instead rely on the level of confidence that a CFEP has that a farm has not increased its N footprint. In practice, this could be achieved by considering things like Google earth images showing the farm system during the reference years, receipts, management practice documents, interviews with previous workers or owners etc.

- 4.12 A further issue that I anticipated Mr Dragten addressing in his report (but which he has not addressed) is a situation where the nitrogen discharges as modelled by Overseer were unusually low during the reference years. There has been a lot of evidence during the Block 2 hearings about the reasons that nitrogen discharges were low during these years. This includes things like a farm having a poor manager (and/or employment issues), a farm being run down, a change in farm system (particularly where that occurred during the reference years but before PC1 was notified), a drop in the dairy pay out and/or wool price and drought.
- 4.13 This issue could potentially be addressed by adopting a different or longer reference year period. It could also be addressed by providing a review procedure where farmers could seek to have their NRP changed where they can produce evidence to substantiate that it is unfairly or unreasonably low.
- 4.14 A similar issue has arisen in the context of Bay of Plenty Regional Council's Plan Change 10. Some of the issues that have been raised are that the Rule 11 benchmark (which determines the N allocation) is unusually low due to illness, marital separation or mitigations made prior to the benchmarking period that reduced nitrogen but are not recognised. I understand that Council is looking at policies which consider hardship as a grounds for reviewing the Rule 11 benchmark. This is to provide guidance for the interpretation of a provision in the plan which provides for adjustments to N allocation where "exceptional circumstances" exist.⁷

5. Stock exclusion and setbacks

- 5.1 I have reviewed Dr le Miere's evidence about the cost of fencing the lengths of rivers and tributaries using the stream order classification, and the costs associated with different setback distances. I have also reviewed the assumptions that he has relied upon in his analysis. I agree with those assumptions. If anything, I consider his assumptions are on the conservative side. For example, I expect that the price of labour for fencing will increase

⁷ Section D of Schedule LR One - <https://cdn.boprc.govt.nz/media/657170/appendix-4-panel-recommendations-on-plan-change-10-clean-copy-version-dated-29-june-2017-pdf.pdf>

significantly over coming years (particularly if there is increased demand and the pool of available contractors does not increase).

- 5.2 Dr le Miere's conclusions are consistent with what I would expect. Stock exclusion is likely to be very expensive and the cost increases exponentially as the setback distances increase. His assessment of intermittent and ephemeral streams is also consistent with my experience and with my visit to my case study farm 2.
- 5.3 The costs and benefits of stock exclusion, setback distances and riparian planting will extremely site specific. I reiterate the views in my Block 2 evidence, that there is no one size fits all approach and that what is required is a tailored and risk based assessment. That will appropriately provide for water quality benefits at an achievable cost.

6. CONCLUSION

- 6.1 In conclusion, I consider that Schedule 1 as amended by Mr Eccles, establishes an appropriate framework for the development and audit of FEPs for both permitted activities and activities requiring consent (my view is that the appropriate consenting pathway is a controlled activity consent).
- 6.2 In the event that the Hearing Panel considers that a FEP can only be prepared for a permitted activity if less judgement is exercised, I consider that Schedule 1A is a good starting point for addressing this issue. I agree with Mr Eccles' opinion that it would likely benefit from specific and directed conferencing by experts with experience in the area and consider that I could usefully contribute to such discussion.
- 6.3 I support the adoption of a pragmatic approach to the NRP and measuring compliance. However, I consider that reasonable review provisions ought to be provided for to provide for situations such as where the NRP needs to be reviewed for the 75th percentile or there is sufficient data for the reference years or the NRP based on these years is unusually low.

6.4 I also agree with Dr le Miere's analysis of the likely costs of fencing and setbacks and agree that the cost will be considerably higher once intermittent streams, ephemeral waterways, wetlands and lakes are considered.



I F Millner

Annexure IFM1

Example of tailoring actions or practices to address critical source area

1. For any management area or critical source area, the actions or practices need to be tailored to the location and farm system. There is no “one size fits all” mitigation that will achieve GFP for a given risk or management area.
2. Figure 1 below provides an example of how the logical and objective collection of relevant data (or information) about a farm and farm system, and an assessment of risk based on that data, will ultimately lead to the tailoring of potential actions. The objective of the FEP is to select the appropriate actions and then provide for them to be implemented in a systematic manner as farm systems and conditions change.
3. Figure 1 is a high resolution contour map that identifies slope and flow paths for a generally flat paddock in the Hawkes Bay. An assessment of risk using this information as well as farm system information illuminates a range of potential effects and from that a range of potential actions can be developed. These effects and outcomes are summarised in Tables 1 and 2 below.

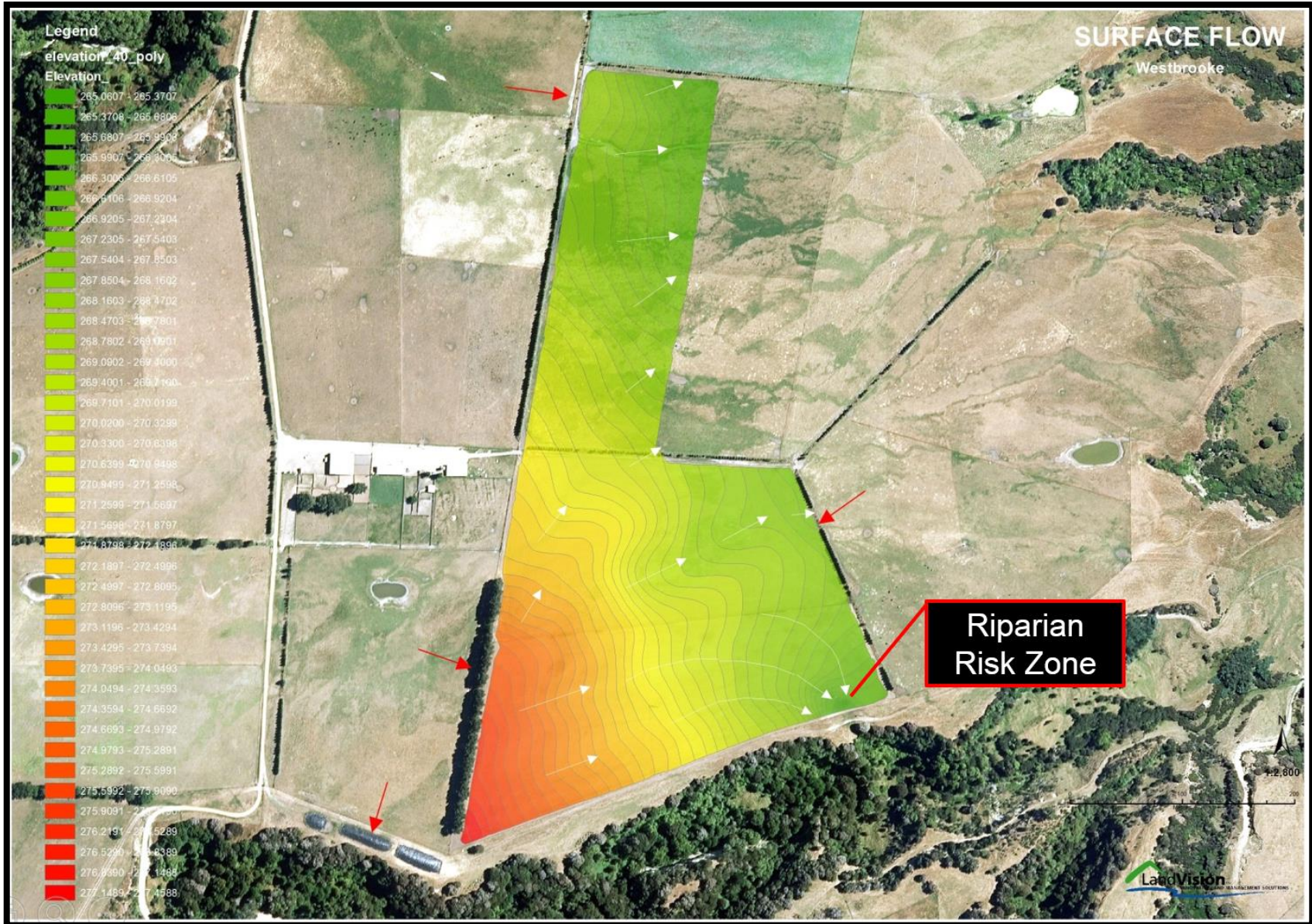


Figure 1: Surface Water flow paths developed from high resolution contour maps. Contour lines = 300mm. White arrows show surface water direction of travel and the riparian risk zone where riparian management should be focussed when necessary.

4. Tables 1 and 2 outline a set of theoretical actions and outcomes based on the site specific risk associated with a range of farm system intensities and risks (in this case the risk is delineated into free draining and slow draining soils).

Tables 1: Set of farm system adaptations based on soils type and stocking intensity: Free draining soil

Effect	Outcome
Soil = free Draining	
Stocking rate within paddock to remain < or = to 10Su ha on a rotational basis	Current riparian management is adequate
Stocking rate is to increase to > 10Su ha on a rotational basis	Current riparian management is adequate but specific attention must be given to maintaining paddock residuals of 1500kg DM May – September)
Stocking rate will increase and stock class will change from lambs and a few bulls to exclusively bulls but still be grass based	Maintain paddock residuals as above and establish temporary riparian zone management when soil conditions a visibly wet
Stocking rate to intermittently increase further based on the establishment on winter crops.	Implement best practice forage crop grazing and implement a riparian buffer when establishing crop. Riparian buffer should aim to be wide enough to slow surface flow (suggest 2-5m of short grazed pasture to maintain tiller density).

Table 2: Set of farm system adaptations based on soils type and stocking intensity: Slow draining soil

Effect	Outcome
Soil = Slow Draining	
Stocking rate within paddock to remain < or = to 10Su ha on a rotational basis	Current riparian management is adequate
Stocking rate is to increase to > 10Su ha on a rotational basis	Current riparian management is adequate but specific attention must be given to maintaining paddock residuals of 1500kg DM May – September) and implement temporary buffers when soil conditions visibly wet to maintain soil condition and infiltration rates.
Stocking rate will increase and stock class will change from lambs and a few bulls to exclusively bulls but still be grass based	Maintain paddock Residuals as above and establish temporary riparian zone management when soil conditions a visibly wet in addition to grass buffers within the paddock
Stocking rate to intermittently increase further based on the establishment on winter crops.	Implement best practice forage crop grazing and implement a riparian buffer when establishing crop. Riparian buffer should aim to be wide enough to slow surface flow (ideally 2-5m of short grazed pasture). Implement controlled duration grazing when soil is able to be "rolled into a worm".