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 2

BY **FEDERATED FARMERS OF NEW ZEALAND INC, FEDERATED FARMERS OF NEW ZEALAND (WAIKATO REGION) 1999 INCORPORATED, FEDERATED FARMERS OF NEW ZEALAND – ROTORUA TAUPO PROVINCE INCORPORATED, FEDERATED FARMERS OF NEW ZEALAND (AUCKLAND PROVINCE) INCORPORATED**

("FEDERATED FARMERS")

Submitter with ID: 74191

To **WAIKATO REGIONAL COUNCIL**

("WRC")

STATEMENT OF PRIMARY EVIDENCE OF GRANT ROBERT ECCLES FOR FEDERATED FARMERS ON HEARING TOPIC 2

10 May 2019

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EXECUTIVE SUMMARY

1. I set out below a summary of my evidence for Hearing Topic 2.

2. The 42A report proposes a large number of significant and fundamental changes to Plan Change 1. In the time available, it is not possible to respond to every change. I have instead focused on what I consider to be the key changes.

3. A fundamental concern, and a key theme of my evidence, is the risk of regulatory failure. I am very concerned that there are significant implementation issues (many relate to resource and capability constraints) that mean it is very unlikely that WRC and the rural professional industry will be able to implement PC1 if the recommendations contained in the 42A report are adopted. In my opinion, the risk of regulatory failure is a risk of acting (which is relevant to the s32 assessment) and, as a matter of good planning practice it is neither efficient or effective for a plan to be adopted that cannot (or has a high risk of not being able to) be implemented.

4. My concerns about implementation relate both to the volume of resource consents to be processed, and FEPs to be prepared, and to the rule and policy framework. In respect of the volume of consents and FEPs, there are three key changes that will significantly increase this:

    a. The removal of the permitted activity rule for FEPs prepared under a Certified Sector Scheme ("CSS"). I consider the CSS ought to be retained as a permitted activity.

    b. The change in activity status for FEPs not prepared under a CSS from controlled to restricted discretionary, with discretion over the content of FEPs and actions and timeframes. I consider that the controlled activity status ought to be retained and that Council ought not to retain control or discretion over the content of FEPs if they are prepared by certified farm environment planners.

    c. The proposal to increase the number of farms to be assessed as Priority 1 and to change the dates for the preparation of FEPs. This will significantly increase the pressure on Council and industry and my view is that the dates ought to be removed and a reasonable period of time adopted for the preparation of FEPs.

5. In addition to the volume of FEPs and consents, implementation issues arise from the following recommended changes:

    a. The deletion of Rule 3.11.5.6 (restricted discretionary activity rule for activities that did not meet the conditions or standards of the notified permitted and

controlled activity rules). The result is that there is no consenting pathway for those farms who propose mitigations that are different from the standards in Schedule C, or prepare a FEP that differs from Schedule 1 or do not prepare a NRP in accordance with Schedule B. In my opinion, a reasonable policy and rule framework ought to be adopted to provide for farmers in these circumstances, as proposed by FFNZ's amendments to Policy 6 and Rule 3.11.5.6.

b. The amendments to Rule 3.11.5.7, and the policy framework, mean that there is no consenting pathway for those undertaking land use change including if a landowner proposes to undertake land use change on part of the land or on part of land forming the farm enterprise (because the amendments to this rule mean that the entire activity will default to non-complying). In my view, a more appropriate approach is for this rule to only apply to those areas of land on which the land use change occurs and to provide for land use change as a discretionary activity, with amendments to Policy 6 as proposed by FFNZ's submission. In my view, a discretionary activity status would also address the concerns raised by the 42A report about land use change on Maori land.

c. The delays encountered to date, the further delays between now and the likely Council decision in April 2020, and then delays while the inevitable appeals are resolved may significantly impact on the progress that is able to be achieved in the 10 year timeframe. In my opinion, the dates ought to be removed from PC1 and the focus ought to be on providing a reasonable period of time for the completion of various obligations under PC1 (e.g. preparation of FEPs and NRPs), following PC1 becoming operative.

6. In principle, I support amendments to reduce the focus on the NRP and nitrogen, and to increase the focus on tailored actions in FEPs and Good Farming Practices ("GFPs"). However, I have fundamental concerns with the proposed amendments to Policy 1 (including that it effectively sets three standards and that it requires "real and enduring" N reductions for farms in the 50th to 75th percentile). I consider it is vital that this policy focuses on GFP as the most effective and efficient way of achieving the short term targets, and staged implementation of the Vision & Strategy, that are the focus of this plan change.

7. I am concerned that the standards for Schedule C recommended by the 42A report are too stringent. I consider that reasonable and appropriate catchment-

wide standards ought to be adopted that can be tailored to the particular farm and sub-catchment through the FEP.

8. I also address in my evidence the reason it is appropriate to ensure consistency in approach between point source and diffuse discharges, particularly in terms of consent terms and the approach to requirements to reduce contaminants.

INTRODUCTION

9. My full name is Grant Robert Eccles. I am a principal planner for Tonkin and Taylor based in Hamilton.

10. I have been asked by Federated Farmers of New Zealand ("FFNZ") to provide expert planning advice and assistance in respect of Proposed Plan Change 1 (and Variation 1) ("PC1") to the Waikato Regional Plan.

11. I was the principal author of the amended planning provisions put forward with the FFNZ submission. In this statement, where I refer to FFNZ's submissions I am referring to FFNZ's submission on Variation 1 unless I specifically state otherwise.

12. I prepared a statement of evidence on Hearing Topic 1 dated 15 February 2019. My qualifications and experience as a planning expert is set out in that statement.

13. 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 brief of evidence are within my area of expertise, except where I state 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

14. This planning evidence relates to Hearing Topic 2 (Part C1 to C7). The 42A report for this topic has recommended some significant and fundamental changes to the policy and rule framework. In my opinion many of the changes are confusing, lack justification or analysis, and will have unintended consequences if adopted. For example, the recommended changes to activity status are acknowledged as having potential implementation implications, but those implications are not then quantified to any degree.

15. Rather than responding to every matter, I consider it would be more helpful for the Hearing Panel if I focus on the key changes. In my opinion, FFNZ has put forward

a robust policy and rule framework that would more appropriately address the concerns raised by FFNZ and many of the submitters. However, to assist the hearing panel I have focused on the 42A report in the first instance to provide some structure to considerations.

16. I have structured my evidence around the following topics:

    a. Risk of regulatory failure.

    b. The use of the NRP and Overseer.

    c. Good Farming Practices ("GFP").

    d. Policy 1.

    e. Certified Sector Scheme ("CSS").

    f. Activity status for farming activities.

    g. Land use change.

    h. Schedule C stock exclusion and setbacks.

    i. Prioritisation.

    j. Equity between point source and diffuse discharges.

17. The relevant planning instruments against which I consider PC1 (and any amendments) ought to be assessed are set out at paragraphs 24 to 42 of my evidence on Hearing Topic 1 dated 15 February 2019. I consider a fundamental issue with the 42A report is that there is no clear identification of and assessment against the objective for PC1.

18. In my view the objective of PC1, and which the s32 or 32AA assessment ought to be based on, is the staged implementation of the Vision & Strategy with the first 10 years representing 10% of the journey. As part of this, the expectation is that farmers adopt good management practices and that further information is gathered and analysis occurs to better understand the catchment, the drivers of water quality and the likely impacts of available mitigations to improve water quality. I have reviewed the various planning evidence filed by parties in response to Topic 1. A clear and consistent theme is that the Vision & Strategy should not be interpreted literally and does not require the achievement of the 80 year targets within this plan change. I agree with that analysis.

19. In my opinion, the recommendations contained within the 42A report represent a significant tightening of the policy and rule framework for many farming activities. It also represents a significant departure in many instances from the notified version of PC1. For example, the activity status for many farming activities has become more stringent and "real and enduring" nitrogen reductions are now required by farmers above the 50th percentile.

20. Due to the volume, scale and significance of the changes proposed, the focus of this evidence is on responding to those points (and addressing FFNZ's proposed changes where relevant) as opposed to focusing in detail on all of FFNZ's proposed changes (as set out in its submission). For these same reasons, I have focused on those matters that I consider to be most fundamental. However, in doing so, if I do not address a matter raised or a change proposed by the 42A report, that should not be interpreted as me agreeing to or endorsing the matter or change.

21. I also note here that FFNZ's submission appears to have been erroneously relied upon by the reporting officers to justify recommended changes to the policies and rules. An example is footnote 36, which appears to be confused with footnote 37 as FFNZ sought a proportionate approach (which relates to footnote 37) not a requirement for 50th to 75th percentile to reduce (which relates to footnote 36). Errors like this have occurred in in a number of places and rather than identify every instance, I simply note that the wording in the track changes to PC1 contained in FFNZ's submission should prevail over inconsistencies with the footnote references in the 42A report track changes.

RISK OF REGULATORY FAILURE

22. Since the mid 1990's I have engaged with WRC regulatory staff and units on a wide range of consenting matters, mostly as an applicant and from time to time as a contracted reporting planner. I am part of a small group of invited professionals that have begun to work with WRC on how their regulatory platforms and systems can be improved and future-proofed to ensure quality and efficiency in the years to come. The advent of PC1 and the inevitable workload it will produce both for WRC, landowners, and the rural professional industry was a catalyst for that review.

23. Throughout my career I have seen plans and policy statements be developed and made operative without adequate (or any) consideration of the "real world" implementation implications of the plan provisions, often with adverse consequences. For a plan change as significant in scope and effect as PC1, it is imperative that any changes proposed to the as-notified plan provisions be

considered through a practical implementation lens, and that implementation matters carry due weight alongside more "academic" policy considerations.

24. The as-notified PC1 provisions will produce implementation strain on WRC and industry, but in my view "both side sides of the fence" would be able to manage if those provisions were adopted. However, I am very concerned that there are significant implementation issues (many relate to resource and capability constraints) that mean it is very unlikely that WRC and the rural professional industry will be able to implement PC1 if the recommendations contained in the 42A report are adopted. I am concerned that apart from the 42A report suggesting there could be implementation issues resulting from the recommendations, there has been no analysis or further consideration of this critical issue. The risk of regulatory failure (as a result of the proposed drafting of provisions) is a risk of acting in the face of uncertainty or insufficient information that is required to be considered in a s32 assessment[1]. In the alternative, or additionally, the risk of regulatory failure could be considered as an efficiency and effectiveness matter under s32(b)(ii).

25. It is not good planning practice to adopt a plan without a clear understanding of whether the Council will have the resources and capability to process the likely number and complexity of consent applications that will arise from it, monitor those consents and carry out any other functions or tasks required of it as a result of the plan change. If WRC is not able to do this, the likely outcome will be that there will be 1000's of farmers carrying out activities without authorisation. Council could find itself in a situation where it needs to do another plan change to attempt to rectify the situation.

26. Such a situation is not fanciful in this instance. The Horizons One Plan is one example of a situation where the regional council was unable to implement the plan as drafted (because it could not grant consent to existing dairy farmers under the rule framework) and is currently considering a plan change to rectify the situation.

27. The reasons for my concerns about implementation are set out in more detail in the sections of my evidence to which they relate. I have also read the evidence of Dr le Miere on behalf of Federated Farmers for Topic 2, who sets out the implementation issues from Federated Farmers' perspective, and I agree with his concerns.

28. In summary, the key implementation issues relate to the following:

[1] I acknowledge that the risk of acting or not acting provision in s32(2)(c) of the RMA is aimed at the subject matter of the provisions – in my view "subject matter" can legitimately encompass implementation issues.

a. A large volume of consents will need to be processed and FEPs will need to be prepared, all within a very short period of time. It is likely that 5,000 consents will need to be processed and monitored by WRC and 5,000 FEPs will need to be prepared by CFEPs (and if the recommended changes to PC1 are adopted, scrutinised by Council). In my opinion, there is a real risk that there is a lack of resources by both WRC and industry to undertake such a large task. This would be made even more difficult as a result of changes recommended in the 42A report, including:

   i. The removal of the permitted activity rule for FEPs prepared under a CSS. This will likely double the resource consents to be processed by WRC when the numbers were already in the 1000's in the as-notified PC1 provisions.

   ii. The change in activity status from controlled to restricted discretionary, with discretion over the content of FEPs and actions and timeframes. This will elevate the level of preparation and assessment required of applications, likely involve a farm visit by the processing planner given that discretion will have to be exercised as to whether to grant the consent or not, and increase the time and cost for both preparing and processing resource consents. In my view, this change in status is both unnecessary and inadvisable for the reasons I set out later.

   iii. The proposal to increase the number of farms to be assessed as Priority 1 and to change the dates for the preparation of FEPs. This will likely mean that 70% or more of farms need to obtain consents and FEPs by 1 September 2021 (or six months after the plan becomes operative).

b. There is no consenting pathway for those farms who propose mitigations that are different from the standards in Schedule C, or prepare a FEP that differs from Schedule 1 or do not prepare a NRP in accordance with Schedule B. FFNZ's submission recommended that these were provided for in the restricted discretionary activity rule and that the conflict between Schedule C and Schedule 1 is resolved so that farmers can propose alternative standards to stock exclusion in an FEP, in appropriate circumstances. A consequence of the recommended deletion of Rule 3.11.5.6 is that there is no consenting pathway for these activities. They would not be provided for in the plan so would presumably default to being a non-complying activity, but without policy support it could be very difficult for WRC to grant consent for these activities. This could potentially impact on a significant number of farmers.

c. There is no consenting pathway for those undertaking land use change. A consequence of the proposed changes to the non-complying activity Rule 3.11.5.7 is that if a landowner proposes to undertake land use change on part of the land or on part of land forming the farm enterprise, the entire activity will default to non-complying. The effect of the recommended changes to the policies mean that it is very unlikely that resource consent could be granted if the land use change involved an increase in any of the contaminants. Accordingly, there could be many landowners who require consent for their entire activity as a non-complying activity. This would not only significantly increase the cost but also likely result in large areas of land or activities having no ability to obtain consent.

d. PC1 is premised on a 10 year timeframe for the achievement of short term targets and some significant changes to how farming activities are regulated (particularly for those activities that require consent and have not previously undertaken any stock exclusion or obtained a FEP). The 10 year period runs from the date of notification in 2016. It is also premised on the proposition that it is necessary to prepare for the future (in terms of better understanding the catchment and water quality drivers and mitigations) and a 10 year period is needed to do that. My concern is that the delays encountered to date, the further delays between now and the likely Council decision in April 2020, and then delays while the inevitable appeals are resolved may significantly impact on the progress that is able to be achieved in the 10 year timeframe. The removal of the dates from PC1 is in my view necessary given the reality of the process that will likely occur before PC1 is made operative

29. I set out the reasons for my concerns above, and potential ways of resolving issues, in the context of the topics considered below. However, I wish to raise a concern I have about whether this can be adequately rectified by changes to provisions or whether a complete re-think is required (particularly in light of changes that might result from the government's freshwater programme that will likely be implemented within the timespan of the inevitably elongated PC1 process).

NRP AND OVERSEER

30. The 42A report acknowledges that the national guidance for the use of Overseer in regulation recommends that it is used in regulation in a relative sense but not an absolute sense. This means using it as an indication of the effects of practice

change on N leaching as opposed to definitively identifying how much N is actually leaching.[2]

31. The 42A report proposes various amendments, such as ensuring the NRP informs the FEP but is not the point of compliance, to ensure PC1 is consistent with the national guidance. In principle, I support those amendments to the extent that they are consistent with the current guidance for the use of Overseer in regulation. However, I have fundamental concerns with how those changes have flowed into policies and rules and discuss that in further detail later in my evidence, in response to the particular policy or rule.

GOOD FARMING PRACTICES ("GFP")

a. The 42A report proposes that the FEPs focus on a GFP approach. The intention appears to be to achieve flexible FEPs that focus on outcomes and to align with work elsewhere on what "good" means, whilst recognising that this will change over time.[3]

32. In principle, I support an approach that is consistent, flexible and outcome focused. This is what I had in mind when I assisted Federated Farmers to develop the Most Practicable Action ("MPA") framework that is referred to in the FFNZ submission. I consider that the two approaches are generally consistent. However, the devil will be in the detail.

33. The content of FEPs (which is where the application of GFP will be determined) and the methods (which may help to provide guidance as to what GFP is) are the subject of the Topic 3 hearing. Accordingly, I reserve my final opinion on the adoption of GFP until those matters are discussed.

34. GFP appears in amendments to Policies 1 and 2. I set out my views on Policy 1 in the next section of my evidence. In respect of the reference to GFP in Policy 2(a1) I consider that it ought to be worded as follows (my changes are indicated in green):

> a1. Set out clear, specific and timeframed ~~minimum standards~~ actions and practices for Good Farming Practice; and

35. I consider it important to distinguish between minimum standards, which imply catchment wide rules that are not tailored, and tailored actions in a FEP. This is also consistent with the terminology in the 19 October 2018 report by Rob Dragten that

[2] 42A report, page 8 para 19.
[3] 42A report, page 59, paras 361 and 362.

is set out at page 61 of the 42A report. For example, paragraph 3b on page 64 refers to "proposed actions/practices to achieve GFP."

POLICY 1

36. The intention of the amendments to Policy 1 appear to have been to de-emphasise nitrogen and clarify the expectations of farmers. Unfortunately, my view is that the recommended amendments have the effect of introducing confusion to policy 1, placing the focus squarely on nitrogen and creating three very different standards. I am also concerned that there has not as yet been any assessment of the costs and benefits of these changes (particularly the N reductions from those farmers in the 50th to 75th percentile) in a manner that corresponds to the scale and significance of the issue as required by s32.

37. A further concern with Policy 1 is the decision to move Policy 6 into paragraphs b3 and b4. My view is that Policy 6 ought to be re-drafted to provide guidance for restricted discretionary and discretionary activities as proposed in the track changes attached to FFNZ's submission.4 I consider that paragraphs b3 and b4 ought to be deleted because they solely focus on reductions in contaminants and do not adequately provide for an assessment of the issues relevant for the particular sub-catchment or the proposed increase in any contaminant in proportion to the issues. I note that the sub-catchment approach will be considered further at the Topic 3 hearing.

38. My conclusion on Policy 1 is that it ought to be significantly re-written and I have proposed alternative wording in Annexure GE1. I set out my specific concerns with paragraphs a1, b and b1 below.

Three different standards for FEPs

39. I am concerned that Policy 1 contains three different and contradictory standards for FEPs. I set out the three standards with my concerns on them below:

    a. Paragraph a1 requires all farming activities to operate at GFP or better.

        i. Subject to how GFP is addressed in the other provisions (including Schedule 1 and any guidance documents), requiring farming activities to operate at GFP would be consistent with the objective for the first 10 years of PC10 i.e. 10% of the journey, most farms obtaining FEPs, farms adopting good management practices etc. However, it is uncertain what "or better" means

[4] This is set out on page 128 of FFNZ's submission.

and what additional standards, obligations or costs that might be imposed on farmers. A requirement to do more than GFP would appear to exceed the objectives for the first 10 years.

ii. It is also not clear how farms that do not obtain a FEP will be required to operate at GFP. For example, the stock exclusion and setback standards in Schedule C would apply to farms covered by the permitted activity Rule 3.11.5.2 but that does not necessarily address other critical source areas or risks on the property that ought to be addressed through GFP.

iii. In light of this, I recommend amending paragraph a1 to require those farming activities that are required to obtain a FEP to operate at GFP.

b. Paragraph b requires farming activities with high discharges to reduce their discharges proportionate to their 2016 discharge and the water quality improvements required in the sub-catchment.

i. In principle, this is similar to the amendment to Policy 2d proposed on page 125 of FFNZ's submission. However, in the absence of policy guidance as to how "proportionate" will be assessed and without a sub-catchment framework, I consider that it is premature to consider such a provision until the consideration of sub-catchments in Topic 3.

ii. FFNZ's submission proposes changes to the policies to require assessment of the discharge in proportion to the industry sector, achievement of targets and characteristics of the sub-catchment. This relies on the development of sub-catchment profiles and I consider that these policy changes cannot be considered in isolation of an analysis of such a sub-catchment approach.

c. Paragraph b1 requires farming activities with a NRP between the 50th and 75th percentile to make "real and enduring" reductions in N leaching.

i. In principle, I agree with a requirement for the 75th percentile to reduce as a means of achieving reductions from the highest dischargers. However, I consider that there has been an inadequate assessment of the costs and benefits of requiring those in the 50th to 75th percentile to also reduce (I elaborate on this further below).

ii. In addition, this provision introduces a different standard from GFP which, in my view, is inconsistent with the objective for the first 10 years and with the purpose of adopting a staged approach. I say this because it imposes greater

reductions and obligations on farmers than the intended 10% of the journey in the first 10 years, with the aim of getting farmers to adopt GFP.

iii. For these reasons I do not support a requirement for the 50th to 75th percentile to demonstrate "real and enduring[5] reductions of nitrogen" and consider that this part of paragraph b1 ought to be deleted.

Reductions for 50th to 75th percentile – costs, risks and benefits assessment

40. In my opinion the 42A report lacks an appropriate assessment of the costs, risks and benefits of the proposal for the 50th to 75th percentile to reduce nitrogen losses. There is no consideration of the proposal against the 10 year targets, save for brief comments that the 80 year targets will require significant reductions so more needs to be done now.[6] In my opinion, this is not the appropriate reference point for the s32 or 32AA assessment.

41. There is no assessment of the amount of nitrogen required to be reduced at an individual property level, other than it is not necessary for farmers to reduce to the 50th percentile but reductions should be possible year on year.[7] There is no assessment of the level of nitrogen reductions this might achieve at a sub-catchment, FMU or catchment level. There is also no assessment of the likely NRPs for each FMU at the 50th and 75th percentile, no assessment of how many farmers would be affected and no assessment of the likely mitigations available to the farmers in order to make reductions from these levels.

42. In my view, the justification of "further environmental gains" is weak, particularly in circumstances where the modelling shows that the as-notified PC1 policy mix would significantly overachieve the 10% reduction represented by the short term targets (Dr Doole's modelling concluded it would achieve significantly more than 10% improvement in 99% of cases).[8]

43. In terms of assessment of costs, the only consideration of cost is a comment that the s32 report described the modelling as showing a 2% reduction in dairy sector profitability as a result of PC1.[9] I understand that this is on the basis of modelling

[5] I note here a concern as to what the term "real and enduring" could be construed to mean in a regulatory environment. For example, does it mean irreversible infrastructure changes (such as installation of a feedpad), or does it mean farm practice changes (such as changing calving date to reduce reliance on brought in feed), or does it mean farm system changes (such as reducing herd size or type).
[6] 42A report, pages 70-71, para 365.
[7] 42A report, page 73, para 408.
[8] Doole et al, June 2016 "Simulation of the proposed policy mix for Healthy Rivers Wai Ora process (doc #6551310) page 46.
[9] 42A report, page 71, para 399.

work undertaken by Dr Doole and others for the CSG. The Council could, and in my opinion it should, have commissioned Dr Doole to re-run his model to assess the costs of the proposal for reductions within the 50th to 75th percentile and to assess the likely nitrogen reductions and implications for the short term and 80 year targets.

44. The 42A report states that individual farms could be impacted by more than 2% but with innovative solutions it may be possible to maintain profitability or minimise the impact on profitability while reducing nitrogen.[10] There appears however to be no evidence to support these conclusions.

45. The costs modelled by Dr Doole were not insignificant - $193m reduction in value add and 1,880 reduction in jobs. There is evidence to suggest that the cost estimate is conservative, with Dr le Miere stating that the significant costs to farmers in obtaining and implementing the FEPs and complying with stock exclusion rules were not included in TLG's economic assessment,[11] and the Ag First report for FFNZ and the Baker Ag report for the Hill Country Group also identifying costs that do not appear to have been factored in.

46. Mr Newman's evidence on behalf of Dairy NZ is that the costs of adopting nitrogen mitigations increase exponentially as the level of nitrogen is reduced.[12] His evidence is that the assessment of cost depends on where farmers are at on the cost abatement curve. If those farmers in the 50th to 75th percentile were at the high end of that curve, the costs could be very steep.

47. There is no assessment of the social and cultural impacts of the proposal. To the extent that social effects can be tied to economic effects, I would expect that the social impacts would be largely driven by the economic costs and by the numbers and types of farmers affected by the proposal.

48. In summary, the 42A report has failed to identify and assess the benefits and costs of the environmental, economic, social and cultural effects of the proposal and, importantly, has not quantified these benefits and costs. In my opinion, for the reasons set out above, the proposal is not the most efficient or effective way of achieving the objective of PC1. Accordingly, I consider that the requirement for farmers in the 50th to 75th percentile to reduce should be deleted.

[10] 42A report, page 71, para 399.
[11] Statement of Primary Evidence of Paul Frederick le Miere for Topic 1 dated 15 February 2019 at 1[64].
[12] Statement of Primary Evidence of Matthew Glen Newman for Dairy NZ for Topic 1 dated 15 February 2019 at [3.4] and [7.13].

CERTIFIED SECTOR SCHEMES

49. In my opinion, there is merit in the Certified Sector Scheme (CSS) provisions from both a farmer perspective (it provides them with the choice of dealing with their industry body or obtaining consent from WRC) and WRC's perspective (it significantly reduces the consent processing burden).

50. The 42A report proposes significant amendments/deletions to the CSS provisions.[13] My primary concern with the use of the CSS provisions centres around ensuring that they are consistently and equitably applied in PC1, particularly with regards to activity status and FEPs. This includes ensuring an efficient and equitable activity status.

Notified version of Rules 3.11.5.3 and 3.11.5.4

51. In principle, I support the activity status for FEPs under a CSS (permitted activity) and FEPs not under a CSS (controlled activity) as proposed in the notified version of PC1. However, I consider the assessment of these activities under the as-notified version of the rules was not equitable or efficient.

52. Under Rule 3.11.5.3, a farming activity that is part of a CSS and operating under a FEP prepared by a CFEP was a permitted activity. However, under Rule 3.11.5.4, a farming activity that is not part of a CSS and is operating under a FEP prepared by a CFEP (and potentially the same person who is the CFEP under the CSS) required consent as a controlled activity, with the matters of control including the content of the FEP.

53. The question that arises from the notified version of the rules is:

Both FEPs are prepared by a CFEP approved and audited by WRC, so why does WRC need to reserve control over the content of the FEP for the farm that is not part of a CSS?

54. It is difficult to see how a farming activity that is part of a CSS will provide any additional quality assurance for a FEP that is prepared by a CFEP when compared to a FEP prepared by a CFEP for a farming activity that is not part of a CSS. The key point here is that the WRC certification and audit process for farm environment planners that prepare FEPs should be robust enough that WRC is satisfied that the contents of any submitted FEP will be of an acceptable standard regardless of what

[13] Recommended in the 42A report to be re-titled as Certified Sector Schemes.

activity status the parent farming activity may hold, whether the farm is part of a CSS, or any other matter.

55. On the basis of the above, I support the relief sought in the FFNZ submission that restricts the Matters of Control under the notified version of Rule 3.11.5.4 to the term of the resource consent and the monitoring and reporting requirements with regards to the FEP. The proposed wording for Rule 3.11.5.4 is set out in **Annexure GE2**.

42A report recommendations for Rule 3.11.5.3 and 3.11.5.4

56. The 42A report recommends that the permitted activity rule for farming activities in a CSS (Rule 3.11.5.3) and the controlled activity rule for farming activities not in a CSS (Rule 3.11.5.4) are replaced with a single restricted discretionary activity rule (i.e. farming activities will no longer have the option of obtaining a FEP under a CSS). In the alternative, the report recommends two restricted discretionary rules (i.e. farming activities have the option of obtaining a FEP under a CSS but they will still need consent as a restricted discretionary activity).

57. The above recommendations are to address concerns from some submitters about the vires of the CSS provisions in terms of s70 of the RMA, and to allow WRC to monitor these activities through consent conditions.[14] I set out my response to each of these two reasons below.

58. First, in respect of s70, that section is concerned with ensuring that any adverse effects on water quality are addressed if a rule allows a discharge of a contaminant as a permitted activity. I am not aware of that section being considered in the context of a diffuse discharge. It is commonly considered in the context of point source discharges, particularly when considering Best Practicable Option ("BPO").

59. The 42A report recommends that the rules in PC1 are framed as land use (as opposed to discharge) rules. However, the effect of the proposed new rule 3.11.5.8 is to authorise diffuse discharges associated with the land use rules so the diffuse discharges associated with a permitted CSS rule would technically be a permitted activity.

60. In PC1, it is the FEPs that manage the diffuse discharge of contaminants. They are prepared by CFEPs (not the CSS). WRC has control over the certification and auditing of the CFEPs. In my opinion, that is an appropriate means of WRC ensuring

[14] 42A report, page 129, paras 803 to 806.

the quality of the FEPs and therefore that the discharge does not result in significant adverse effects (as required by s70).

61. In addition (and as explained in more detail below), the sheer volume of FEPs that WRC would need to process if every FEP required a resource consent with restricted discretionary status, and the shortage of suitably qualified people to assess whether proposed actions in a FEP appropriately manage adverse effects, mean that it is unlikely that the consenting process would add any further rigour to the assessment of effects. There is likely to be a shortage of CFEPs and the same is likely apply to WRC's consenting staff. In my opinion, any perceived control WRC had over the discharge (for example, to ensure no significant adverse effects on aquatic life), as a result of requiring farming activities that are part of a CSS to obtain a restricted discretionary consent, would be illusionary.

62. Second, in respect of monitoring farming activities through consent conditions, the reporting officers appear to consider that this will provide greater certainty around what is expected for farming activities and enable a clearer monitoring and compliance framework to be established to ensure necessary on farm management changes actually occur.[15]

63. I find it difficult to see how a consenting framework (particularly as a restricted discretionary activity with discretion reserved over the content of the FEP) will provide greater certainty for farmers. Farmers may find themselves in the position of engaging a Council approved and certified CFEP to prepare a FEP only for the WRC consenting officer to require changes. This does not provide certainty for farmers as to what is expected of them in order to comply with PC1. In my opinion, a more appropriate mechanism to provide certainty is through Schedule 1, the certification and auditing process and the development of guidelines such as those recommended by the 42A report around GFP.

64. I have expressed my views above that the purpose of the CFEP process is to provide assurance to WRC as to the standard of FEPs without the need for WRC to control the detail. WRC retains control over the quality of FEPs through the certification and auditing process for CFEPs. WRC retains control over and/or monitors the implementation of FEPs through the compliance and monitoring process. I do not agree that WRC needs to retain control over the FEPs through a consent in order to establish a monitoring and compliance framework.

[15] 42A report at para 824.

65. The reporting officers recognise the significant burden a requirement for farming activities under a CSS to obtain a consent would place on Council in terms of implementing PC1. The 42A report acknowledges that approximately 5,000 farms will require FEPs and in that regard the CSS is a means of delivering FEPs with oversight comparable to a resource consent process but without generating the need for 5,000 resource consents.[16]

66. I agree that this recommended change will significantly increase the plan implementation burden for WRC. My view is that the Hearing Panel should consider all reasonable avenues for retaining FEPs prepared under a CSS as a permitted activity. Requiring resource consent applications for every farming activity that needs a FEP will generate a significantly larger number of applications (perhaps in excess of 2,500) for WRC implementation staff to deal with for no additional benefit (as the CFEP preparing the FEPs is certified and audited by WRC). As I have set out earlier in this evidence, in my view there is a credible risk of regulatory failure associated with the recommended rule amendments in terms of the capacity of WRC to handle the number of applications.

67. Relevant to my earlier comments about the equitable treatment of FEPs between those prepared for a farming activity that is a member of a CSS and those prepared for a farming activity not part of a CSS, I am also concerned with the view put forward in the 42A report that it is most appropriate if FEPs are subject to scrutiny through a consent process.[17]

68. My concern is amplified by the very wide ranging matters to which WRC is recommended to "restrict" its discretion, which include the content of an FEP. I reiterate my view that WRC should not need to reserve extensive discretion over the contents of FEPs by way of a consent process if the CFEP certification and audit process is robust and well managed. Reserving wide ranging discretion negates the intent and effect of the certification process.

69. In my view, it also further adds to the implementation burden on WRC. Mr Matheson has already expressed his concern on behalf of NZIPIM about the ability to source sufficient CFEPs to prepare the FEPs.[18] I expect that WRC will not have the skills, experience or expertise within its consenting staff, nor the ability to recruit such

[16] Section 42A report at [807].
[17] 42A report, page 132, para 824
[18] Statement of Evidence of Lee Anthony Matheson on behalf of the New Zealand Institute of Primary Industry Management – Waikato Branch dated 15 February 2019.

people, in order to provide any additional or effective scrutiny of FEPs through the resource consent process.

70. Even if such a situation did not result in regulatory failure, I am concerned that significant additional cost could be imposed on applicants and Council for no additional environmental benefit.

71. If the Hearing Panel is minded to adopt the 42A recommendation, at the very least I recommend that the matters of discretion be narrowed down along the lines of the amendments to Rule 3.11.4.4 set out in Annexure GE2. Further, it would be inefficient to have two separate restricted discretionary activity rules and I query whether there would be any benefit in retaining provisions relating to CSSs in PC1 at all.

72. If the Hearing Panel is minded to adopt the 42A recommendations without amendment, I would query the rationale for retaining the CFEP process. If a restricted discretionary consent is required, with Council reserving discretion over content, timing and nature of FEP actions, then I consider that farmers should have the freedom to choose any person they wish to prepare a FEP. This would be consistent with any other consenting process where the applicant may choose the experts it wishes and then Council retains discretion over the content of management plans provided in support of consent applications.

Standards for CSS

73. If the CSS approach is retained in some form, I support the 42A recommendation to significantly alter Schedule 2 to, amongst other things, remove the reference to the achievement of water quality targets as an assessment matter for a CSS.[19] I also support the proposed wording of Policy 3A to clarify and strengthen standards, monitoring and auditing.

74. The reporting officers have reserved their position on whether there should be some environmental performance criteria associated with a CSS.[20] My view is that the environmental performance of a scheme will be dictated by the effectiveness of the FEPs that it produces, and adherence to the FEP actions by members of the scheme. The content of FEPs and the pre-requisite qualifications and experience of those that can prepare them, is set out in Schedule 1. In turn, each CSS must have a process for assessing performance against agreed actions at an individual

[19] 42A report, pg 55 and 56, Schedule 2
[20] 42A report pg 134

property level, and the performance of any personnel employed by or otherwise contracted to the Scheme to prepare, certify, and audit the implementation of FEPs.[21] There is no thus no need for the CSS assessment provisions in Schedule 2 to specifically set out environmental performance criteria.

ACTIVITY STATUS FOR FARMING ACTIVITIES

75. The 42A report proposes some significant changes to the activity status of farming activities. In my opinion, the proposed changes will significantly add to the cost of obtaining consent, increase the implementation burden for Council and create a real risk of regulatory failure. My recommended track changes to the rules are set out in **Annexure GE3.**

Rule 3.11.5.2: Permitted activity: Low intensity farming

76. In principle, I support the use of a permitted activity rule for low intensity farming activities. However, I consider there are some unintended consequences of the changes proposed in the 42A report that ought to be addressed.

77. In addition, I consider that there ought to be a reasonable consenting pathway provided for those who cannot comply with the permitted activity standards, most notably the standards in Schedule C. This could be provided for if the current conflict between Schedule C and Schedule 1 was clarified such that a farmer could provide for alternative mitigations to those prescribed in Schedule C through an FEP (that would give the low intensity farmer the option of obtaining a FEP as a controlled activity).

Standards applying to all properties – section A

78. Paragraph 2C proposes that "no dairy farming or grazing of dairy cattle" can occur on any property that is subject to the permitted activity rule. Dairy farming is defined in PC1 but "dairy cattle" is not.

79. My concern with the exclusion of the grazing of dairy cattle from the permitted activity rule is that this will likely capture a significant number of low intensity farming activities, such as dairy support, calf rearing, those raising dairy cattle for beef etc. In my opinion, it would likely significantly increase the number of properties under 20ha that would require resource consent and a FEP. The provision will also capture the likes of rural-residential properties in the order of 5000m^2 -1ha in size (of which there are 1000's in the Waikato Region) whose occupants might routinely graze a

[21] 42 report, pg 56, Schedule 2 Clause D3

small number of dairy cattle (e.g. up to 3 or 4 for periods of the year). This would further add to the already concerning implementation burden for WRC, and also raises a procedural issue given that such rural-residential landowners in all likelihood rightfully took very little (if any) notice of PC1 when it was notified, but would find themselves captured by the recommended rule if it is adopted.

80. These properties under 20ha will already be subject to the stock exclusion and setback requirements in Schedule C. In the absence of any assessment by WRC as to the costs and benefits of extending the exclusion to "grazing of dairy cattle", and to avoid the presumably unintentional consequence for small rural-residential blocks as set out above, my opinion is that paragraph 2C ought to simply exclude "dairy farming."

81. This is consistent with the approach in Plan Change 10 in Rotorua, where commercial cropping, commercial horticulture and commercial dairying (defined as, among other things, being supported by milking shed infrastructure) are excluded from the low intensity permitted activity rules (Rules LR R3 and R4 of Plan Change 10).

Standards applying to properties greater than 20ha – Part C

82. Paragraphs 1 and 2 propose that land with a stocking rate less than six stock units or that only has horses does not need to do anything other than comply with Schedules A and C. Paragraph 3 proposes more stringent restrictions on land with a stocking rate between six and ten stock units.

83. From a planning perspective, there does not appear to be a clear rationale for excluding properties with horses (no matter how intense) from any FEP assessment. While they may not be able to be easily modelled in Overseer, they may have high discharges of the other three contaminants that would benefit from an assessment through the FEP process.

84. The implications for properties between six and 10 stock units will depend on whether a slope threshold is imposed on grazing. It may be appropriate that they obtain a FEP. In my opinion, further consideration ought to be given to a simplified FEP for such farmers that recognises their low intensity and just addresses the issues of relevance for these farmers. This is something that I understand will be considered in Hearing Topic 3 when the content of FEPs is considered.

Rule 3.11.5.2A: Medium intensity farming

85. The 42A report suggests that medium intensity farming activities (defined as activities below 18 stock units) could be provided for as a controlled activity. Activities above 18 stock units would be treated as a restricted discretionary activity. In my opinion, if medium intensity activities can be provided for in this way, all farming activities ought to be provided for as a controlled activity.

Rule 3.11.5.4: Restricted activity rule

86. The 42A report recommends changing the activity status for farming activities that require a FEP from controlled to restricted discretionary. The key concern appears to be that a controlled activity status will mean that WRC cannot decline an application that clearly increases the losses of any or all of the four contaminants.[22] A secondary reason for the recommendation appears to be that there is no clear and unambiguous threshold as to what constitutes an increase in loss of contaminants and therefore a controlled activity status is not appropriate.[23]

87. The 42A report identifies that the more onerous activity status will involve more significant investigation of the losses of the four contaminants and this will lead to complexity, cost and time commitments for both applicants and WRC.[24] However, there is no assessment or quantification of the costs, risks and benefits and the report simply notes the discomfort of the WRC implementation team in terms of the Council's capacity to deal with processing applications and monitoring consents (particularly if the activities under the CSS also require consent).

88. In my opinion, the purpose of the RMA and the objectives of PC1 can be met by a less restrictive regime (being a controlled activity status) and therefore, in terms of the assessment required under s32, that regime ought to be adopted. Further, the concerns about implementation (which relate to my concerns about regulatory failure) are a risk of acting that are lower with a controlled activity status, and are a more efficient and effective way of giving effect to the PC1 objectives.

89. The findings of the Lake Taupo regulatory regime indicate that the potential implementation risks are real. The Lake Taupo case study referred to in the s32 report identified that it was necessary to employ new staff (skilled in both nutrient management and the RMA) to implement Variation 5, and found that the

[22] 42A report, page 50, para 293.
[23] 42A report, page 50, para 293.
[24] 42A report, page 50, para 294.

implementation costs were high (particularly when compared with the implementation of a point source regime).[25]

90. Putting the implementation issues to one side, I do not agree that there is a planning justification for a restricted discretionary consent status for FEPs. The activities obtaining FEPs and requiring consent under this rule are existing farming operations. In my opinion, it is material that these are not new activities because it changes the types of issues that Council will be concerned with.

91. If it was a situation where Council wanted to tell an applicant that a piece of land was suitable for sheep and not dairy, then Council might need to turn down a resource consent. However, that is not the case. In the present situation, the application for a dairy farm is for an existing activity and Council is not telling the farmer that that activity can no longer continue. Instead, the Council will want to control matters such as ensuring that those above the 75th percentile reduce or that the NRP is maintained or FEPs are prepared to an acceptable standard. In my view, these types of concerns are ones that lend themselves towards a controlled activity consent, with conditions requiring adherence to the 75th percentile, for example.

92. My understanding of the analysis by TLG (particularly Dr Doole's modelling) is that significant environmental gain will be made from farmers obtaining a FEP and that the proposed policy mix will result in the 10% targets being significantly over achieved in 99% of catchments. In this context, I consider that the reporting officer's concerns about uncertainty over contaminant increase or reductions not being achieved are unfounded.

93. In all of these circumstances, I consider that a controlled activity status will be the most efficient and effective way of achieving the objective of PC1 i.e. staged implementation of the Vision & Strategy with 10% of progress in the first 10 years.

Rule 3.11.5.6: Deleted restricted discretionary activity rule

94. The 42A report proposes to delete rule 3.11.5.6. In my opinion, this was an important rule that provides an appropriate consenting pathway for farmers who could not meet the standards in Schedules A, B, C or 1. It provided for consideration of situations where, for example, a farmer proposes a mitigation not recognised by Overseer (and therefore departed from Schedule B) or where a farmer proposes an alternative mitigation that results in one contaminant increasing (and therefore departs from the

[25] Section 32 report, page 167 and Case Study I: Lake Taupo catchment property level nitrogen discharge limits - https://www.waikatoregion.govt.nz/assets/WRC/Council/Policy-and-Plans/HR/S32/E8/3034258.pdf

notified wording of Schedule 1) but addresses contaminants that are the principal issue in the sub-catchment.

95. The effect of the recommended deletion of Rule 3.11.5.6 is to make no provision for any activity that does not comply with a condition, standard or term of any of the recommended permitted, controlled or restricted discretionary activity rules. The effect of this for farmers above 18 stock units is that if they do not meet any of the conditions listed in Rule 3.11.5.4 (e.g. they propose a departure from Schedule A, B or C) their activity will be assessed as non complying.

96. In my opinion, this is not an effective or efficient planning outcome. I consider that these kinds of departures from the rules can be reasonably provided for with a restricted discretionary activity status, as notified.

97. In conjunction with Rule 3.11.5.6, FFNZ's submission proposed amendments to Policy 6 and also the addition of information requirements for restricted discretionary activity rules. These proposed changes are set out in **Annexure GE3.** In my opinion, these amendments would provide guidance for farmers as to what is expected of them if they depart from the conditions in Rules 3.11.5.2, .3 or .4 and it would provide certainty and transparency for WRC in implementing PC1.

98. I am concerned about the risk of regulatory failure if there are farmers who cannot meet the conditions in Rules 3.11.5.2, .3 or .4 and find themselves with no consenting pathway other than to apply for a non-complying activity. This would add to the implementation risk for Council.

LAND USE CHANGE

99. The Waikato and Waipa Rivers catchment is around 1.1 million ha in area and contains a very high proportion of rural land use. Environmental and farming technology and systems are rapidly evolving and will continue to do so in the future to adapt to changing circumstances and climate change. The ability of the farming and agricultural sector to evolve and alter its land use as required is an important part of building resilience in communities and ultimately providing for economic and social wellbeing. For those reasons, it is in my view important that PC1 provides an appropriate regulatory pathway for land use change and does not set the threshold too high for such applications to be granted, or even be contemplated.

100. This applies to any land use change, regardless of who owns the land. This would be consistent with the effects based focus and assessment required under the RMA. In this section I set out my views on why land use change ought to be a discretionary

activity, why Rule 3.11.5.7 ought to only apply to that part of the land or farm enterprise that is changing use and why the proposed changes would reasonably provide for Maori owned land.

Discretionary activity

101. In my opinion, the combination of the non-complying activity status for the specified changes in land use under Rule 3.11.5.7 and the wording of Policy 6 (in the notified version of PC1) amounted to a de facto prohibition on land use change.

102. I have considered whether a non-complying application for land use change could pass the s104D gateway test and the evaluative s104 matters where the application involves an increase in one contaminant but reductions in other contaminants, such that there is a net environmental benefit. In my opinion, it is not fanciful to consider a situation where N may increase as a result of a land use change proposal but there may be a significant decrease in sediment, phosphorous and/or E coli in a sub-catchment where sediment, phosphorous and/or E coli are demonstrably the contaminant(s) of concern.

103. In my view such an approach has merit but there is little certainty it would be granted consent under the notified version of PC1, especially in light of the extremely directive wording of Policy 6 (which the 42A report proposes to move to Policy 1(b4)). In my opinion, the more certain outcome is that applications that result in the increase of one or more contaminant are highly likely to be declined for not passing the gateway test without having the chance to be considered on their merits under s104.

104. This issue is one of the symptoms of the blunt “overall reductions” premise of PC1, and has (in combination with the factors set out earlier in this section) driven my preference for the non-complying activity status for land use change applications under Rule 3.11.5.7 to be replaced with discretionary as a more appropriate threshold.

105. Adopting a discretionary activity status for land use change consents, in combination with the policy and Schedule 1 changes proposed by FFNZ (which I support) to provide strong guidance for assessing and deciding on such applications, would create a more appropriate regulatory pathway. It would not “lock the door” to land use change proposals that may make real progress on reducing the contaminant(s) of issue in a sub-catchment but may not necessarily achieve overall reductions in all four listed contaminants.

106. Accordingly, while I support the recommendation in the 42A report to delete Policy 6 in its entirety, I do not support (for all of the reasons set out above) the insertion of effectively the same wording as was in Policy 6 in the recommended new clause b4 in Policy 1 in the 42A report. In effect, that means that the words end up in a different place but the effect of the policy remains.

107. In Annexure GE3 I have set out the amendments to Policy 6 and Rule 3.11.5.7 as proposed in FFNZ's submission. While these focus on FFNZ's MPA framework, in my opinion the GFP framework now proposed is very similar and (depending on how this is developed and refined for the Hearing on Topic 3) could be substituted for the references to MPA.

108. In my opinion, it is good planning practice to provide reasonable policy guidance for anticipated activities. It is also good planning practice to specify the information requirements for applications for consent for such activities. I consider that the amendments proposed in Annexure GE3 provide a more robust, efficient and effective planning framework and is the least restrictive regime to achieve objectives of PC1.

110. If the non-complying activity status is to remain by way of Rule 3.11.5.7 (and my strong view is that it should not), then I agree in part with the 42A recommendations that it is amended as follows:

    a. The part of the notification clause that qualifies non-notification with a loss of contaminants ought to be deleted. This adds no real benefit in practice and is questionable on vires grounds.

    b. The end date for the rule of 1 July 2026 ought to be deleted. I consider this date to be both overly optimistic in terms of developments in the PC1 process and from central government in the last 12 months, and potentially problematic in trying to remove it in the future.

Whole activity non-complying

111. One of the consequences of the recommended amendments to Rule 3.11.5.7 is that where land use change is proposed on part of an area of land, or part of land forming a farm enterprise, the whole activity becomes non-complying. It is not clear whether this was intentional or whether this is an unintended consequence of amendments to this rule.

112. In my opinion, Rule 3.11.5.7 ought to only apply to that area of land that is changing use. If the whole activity was to become non-complying (or discretionary if FFNZ's submission is accepted), that would significantly increase the cost for seeking consent, increase the resources required to process the consent and greatly depart from the intention of PC1, which is that existing activities are provided for (albeit that they must now comply with certain standards and/or obtain a FEP).

113. This could be achieved by the proposed wording for Rule 3.11.5.7 set out in Annexure GE3.

Maori land use change

114. The 42A report has reserved its recommendation on the activity status for land use change of Maori land until the officers have considered legal submissions and evidence on this issue.[26]

115. A discretionary activity status specifically for Te Ture Whenua Maori Act ("TTWMA") and Treaty settlement land was considered in the s32 report.[27] It was dismissed on the basis that the RMA defines the functions of a council (which include the ability to control the use of land for the purposes of maintaining or enhancing freshwater quality), a regional council must have regard to the actual and potential effects of the activities in the environment, and objectives, policies and rules should have an effects basis. I agree with those statements.

116. The s32 report also states that policies and rules that provide for the flexibility for the development of TTWMA and Treaty settlement land need to show that the effects of the activities are different from activities on other land. I have not seen any evidence that shows that the environmental effects of land use change on TTWMA or Treaty settlement land are different from the environmental effects of land use change on other land.

117. In my view, a more appropriate approach to address any concerns about the development of Maori land would be to adopt a discretionary activity status for any application for land use change, regardless of ownership. That would provide for an effects based assessment and a reasonable consenting pathway where the applicant can demonstrate that the activity is appropriate.

118. As a discretionary activity, Part 2 of the RMA would be relevant to the assessment of whether to grant consent. That would provide for an assessment under (amongst

[26] 42A report, para 989.
[27] Section 32 report pages 210 to 211.

others) sections 5, 6(e), 7(a) and 8 of the RMA, all of which in my view would provide support for development of Maori land if the land use sought was appropriate from an effects point of view. In my opinion, that would be an appropriate effects based assessment.

119. Policy 16 in PC1 provides specific policy support for an application to change land use on a parcel of Maori owned land. However, I find no support in the higher order Waikato Regional Policy Statement ("RPS") for such a policy. Objective 3.9 of the RPS generally provides for the relationship of tangata whenua with the environment but does not specifically refer to the need to enable development of or land use change on multiple owned Maori land. Neither do the RPS provisions (Section 2.5) arising from the Vision and Strategy The adoption of Policy 16 would thus appear to be inconsistent with the s32 assessment of Council's functions and an effects based approach, and I would support its deletion if the Hearing Panel were minded to do so.

SCHEDULE C

120. The 42A report recognises that "FEPs are a substantial and critical component of PC1."[28] In my opinion, the process of identifying tailored actions through a FEP are likely to be the most effective and efficient means of achieving the water quality objectives of PC1. The 42A report also discusses minimum standards and the possibility of increased minimum standards. It suggests that the minimum standards could be a useful backstop if the GFP framework is not sufficiently certain.[29] Minimum standards by definition would apply catchment wide and would not be tailored to individual farms.

121. I am concerned that increasing minimum standards, or being too rigid with minimum standards could impose significant cost on the community for questionable environmental benefit. In my opinion, Schedule C ought to set out reasonable non-tailored standards and the FEP ought to contain tailored actions and practices. That would provide for a situation where the FEP might specify something that is more stringent than a standard contained in Schedule C, or something that is less stringent or something entirely different, depending on the circumstances of the particular farm (as suggested in the evidence of Mr Ian Millner for Topic 2 on behalf of Federated Farmers).

[28] 42A report, page 58, para 353.
[29] 42 A report, page 60, para 366.

122. As explained in the evidence of Dr le Miere, there is an inconsistency between Schedule C and Schedule 1 in terms of whether an action that is different from the standards contained in Schedule C can be proposed in a FEP. In my view, such an outcome ought to be provided for where it will achieve the same or similar environmental outcome. This would increase the efficiency of PC1 by helping to address concerns raised by the AgFirst and Baker Ag reports about the excessive costs for those who need to provide water reticulation and stock crossings in order to comply with the stock exclusion requirements.

123. Accordingly, my opinion is that the FEP ought to be able to provide for different actions/practices to the standards explained below where it will more appropriately (from an environmental and/or economic perspective) address the critical source area(s). This could be achieved by adding the words "and Schedule 1" to the first sentence of Schedule C as follows:

> Except as provided by Exclusions I. ~~and II.~~ and III, and Schedule 1, cattle, horses, deer and pigs ~~stock~~ must be excluded from the water bodies listed in 6. ~~i. to iv.~~ below as follows:

124. I set out my concerns in respect of the other standards in Schedule C below. I have also attached, as **Annexure GE4**, a table comparing the 42A recommendations, FFNZ's position and the Sustainable Dairying Water Accord with PC1. This provides a summary of the changes in the 42A report, compared with PC1, and my recommended changes to the standards (as explained in more detail below).

Stock exclusion

125. The 42A report notes that the stock exclusion requirements in the notified version of PC1 were more stringent than the 2016 proposed national stock exclusion regulations in terms of timeframes for implementation, size of setbacks and slope requirements.[30] The 42A report proposes changes that will make the stock exclusion requirements even more stringent and the officers consider that this is appropriate to meet the requirement of achieving the 80 year water quality objectives of the Vision & Strategy.[31]

126. I disagree. In my opinion, adopting more stringent stock exclusion requirements will not be the most effective or efficient option for achieving the objective of PC1.

[30] 42A report, page 141, para 888.
[31] 42A report, page 142, para 890.

127. The case studies in the AgFirst and Baker Ag reports establish that stock exclusion will be very expensive for some farms (particularly for hill country farms that also need to provide for water reticulation and stock crossings). Dr le Miere's evidence is that the cost of fencing itself is also likely to be very high.[32]

128. I am not aware of any quantified evidence regarding the environmental benefits of requiring stock exclusion from all waterways or that it is required to achieve the 10 year targets. Indeed, Dr Doole's modelling shows that the 10 year targets are over achieved with the policy mix. In circumstances where stock exclusion can still be considered through a FEP (where appropriate to address a critical source area),[33] there does not appear to be a clear justification for the significant costs associated with requiring stock exclusion from every property (or to make the stock exclusion standards more stringent).

129. One of the recommended changes to the notified version of PC1 is to include intermittent waterways. The 42A report notes that CSG considered including intermittent waterways but decided such inclusion was impractical and compliance would be difficult to enforce, and therefore exclusion of stock from intermittent waterways ought to be considered through an FEP process.[34] This is consistent with the evidence of Mr McGiven and Mr Millner for FFNZ, where they explain the uncertainties and difficulties in assessing intermittent waterways.[35] In my opinion, intermittent waterways are not sufficiently certain to include in Schedule C as a non tailored action required throughout the catchment. However, they are something that could be more appropriately addressed through tailored actions in FEPs.

130. Another recommended change is to provide a slope threshold above which stock exclusion is not required. I agree that an exception ought to be provided for more extensive farming activities but I do not think that slope is sufficiently objective and certain. I consider that the exception ought to be based on stock units.

131. Mr McGiven and Dr le Miere raise concerns in their evidence about how a slope threshold would be measured and the lack of certainty for farmers and Council.[36] I consider that this could be a potential implementation and enforcement issue for

[32] Statement of Evidence of Paul Frederick le Miere dated 3 May 2019, para 55.
[33] Mr Millner's evidence is that what is required is "the right actions in the right places" as opposed to blanket stock exclusion rules, see Statement of Ian Francis Millner dated 3 May 2019, para 6.4.
[34] 42A report, page 143, para 899.
[35] Statement of Evidence of Andrew Peter McGiven dated 3 May 2019, para 22; Statement of Ian Francis Millner dated 3 May 2019, para 6.23.
[36] Statement of Evidence of Paul Frederick le Miere dated 3 May 2019, paras 67 and 68; Statement of Evidence of Andrew Peter McGiven dated 3 May 2019, paras 24 to 26.

Council if it is not able to conclusively, objectively and fairly determine the slope of land and apply the stock exclusion rules.

132. From a planning perspective, a stocking rate would be more objective and conclusive than a slope threshold. It has been used in two other plan changes that I am aware of (Tuki Tuki Plan Change 6 and the Auckland Unitary Plan). I note that if the exemption applied to a particular farm, it would not prevent stock exclusion from being proposed in a FEP where necessary to address a critical source area.

133. In summary, planning provisions need to be clear, unambiguous and implementable. I do not consider that the proposals to make them more stringent achieves these objectives. In circumstances where actions like stock exclusion from intermittent waterways or stock exclusion from waterways above 15 degrees can be considered through tailored actions in FEPs (to address specific risks or critical source areas), I consider that to be a more efficient and effective means of addressing the issue.

Water reticulation and stock crossings

134. The 42A report acknowledges that significant cost is associated with water reticulation if alternative animal drinking water must be provided as a result of fencing off waterways. However, it concludes that because E coli levels exceed water quality targets for large parts of the catchment, these costs are an "unavoidable consequence of achieving the outcomes sought by the Vision and Strategy and PC1."[37] In my opinion, there has been an inadequate assessment of those costs of this proposal and of alternative actions for achieving the same water quality outcomes at lower cost.

135. The potential costs of water reticulation are considered in the context of case study farms reported in the AgFirst and Baker Ag reports. A summary of these reports and the costs of water reticulation and stock crossings is set out in Dr le Miere's evidence.[38] For some of these farms the costs of water reticulation are in the range of $173,000 to $250,000. Mr Millner's evidence refers to the benefits of a tailored FEP assessment and he briefly describes some alternatives to stock exclusion e.g. provision of an alternative water source and shading away from the waterway to deter stock from entering the waterway.[39] This could be a considerably less expensive option for achieving the same outcome but it has not been considered by the 42A report or in any of the modelling work done by TLG.

[37] 42A report, page 144, para 904.
[38] Statement of Evidence of Paul Frederick le Miere dated 3 May 2019, paras 56 to 64.
[39] Statement of Evidence of Ian Francis Millner dated 3 May 2019, paras 4.14 and 6.11.

136. I consider that this issue could be addressed by amending the first sentence of Schedule C to provide for tailored actions in Schedule 1, where stock exclusion cannot be complied with (as explained above). The amendments I propose to Rule 3.11.4.6 and Policy 6 would also assist, for example, where there are reasons to depart from Schedule C and this is not addressed in the FEP prepared under Schedule 1.

137. Another issue is that the 42A report recommends that stock are required to use stock crossing structures in order to cross waterbodies. I note that it has provided the option for stock to enter a waterbody where they are being supervised and actively driven across the waterbody in one continuous movement and provided that happens no more than once a week. In my view, this would be an efficient and effective means of addressing the potentially significant cost involved in installing a crossing structure.

138. It would also address the potential environmental issues identified in Mr Millner's evidence with culverts associated with stock crossing structures impeding fish passage.[40] Accordingly, I consider that paragraph 3 of Schedule C ought to be amended as proposed by the 42A report (i.e. by inclusion of the option in square brackets).

Setbacks

139. The 42A report recommends moving the setback requirements to Schedule C. I agree that it is easier for plan users if these are aggregated with the stock exclusion requirements. However, I consider that the setback distances and linkage with slope criterion are too stringent and uncertain.

140. With the exception of council controlled drains, the proposal is that a setback of 1m on land with slopes of less than 15 degrees is required and a setback of 3m for land between 15 and 25 degrees is required. Both Mr McGiven and Dr le Miere have raised concerns in their evidence about how a slope threshold will be interpreted and applied.[41] From a planning perspective, I am also concerned that a slope threshold is likely to be too difficult to objectively and consistently define and apply in practice, particularly on the variable topography that is typical of large parts of the catchment.

141. In my opinion, a more appropriate approach would be to adopt 1m as the setback for all land with more than 18 stock units (as proposed in FFNZ's submission). This

[40] Statement of Evidence of Ian Francis Millner dated 3 May 2019, para 6.30.
[41] Statement of Evidence of Paul Frederick le Miere dated 3 May 2019, paras 67 and 68; Statement of Evidence of Andrew Peter McGiven dated 3 May 2019, paras 24 to 26.

would provide an objective basis that is easily understood by farmers and able to be consistently applied by Council. This would still provide the opportunity for a tailored assessment in the FEP which could result in a greater setback being applied in order to address a critical source area. In circumstances where most farms are being required to obtain FEPs, this would be the most effective and efficient means of achieving an appropriate setback (compared with a more stringent non-tailored setback standard that is to apply to all farmers without consideration of cost and benefit).

142. The 42A report also recommends that a 10m setback is required for all council controlled drains. In the track changes to Schedule C, reference is made to a need to ensure consistency with Rule 4.2.18.1 of the Waikato Regional Plan.

143. Rule 4.2.18.1 does not require a 10m setback from council controlled drains. Instead, that rule refers to maintaining access to council controlled drains for maintenance purposes. Under that rule, consent is required if anyone wants to undertake activities within 10m of the drain such as planting trees or placing a structure, placing fences perpendicular to the drain without a gate, fences greater than 1,200mm high parallel to the drain, placement of fences parallel to the drains that prevent access for maintenance, etc.

144. Mr McGiven's evidence is that he has fenced off the council controlled drains on his property, the average setback is 3-4m and this does not prevent council from accessing the drains for maintenance purposes.[42] Mr Millner's evidence is that farmers all over the country have fenced council drains, with a variety of setbacks, and that has not impeded drain maintenance.[43] Indeed, both witnesses raise concerns about practical (in terms of how clearance would be maintained) and financial (in terms of loss of land and loss of income from that land) implications if a 10m setback was required.

145. From a planning perspective, I do not consider that Rule 4.2.18.1 requires or justifies a 10m setback under the PC1 provisions. The purpose of Rule 4.2.18.1 is to manage access to artificial watercourses and the beds of drains and rivers in drainage scheme areas and river control scheme areas for maintenance purposes. The PC1 setback rules are aimed at managing water quality. The two matters are fundamentally different and should not be conflated. Further, in light of Mr McGiven and Mr Millner's evidence, a 10m setback would not be the most efficient and

[42] Statement of Evidence of Andrew Peter McGiven dated 3 May 2019, para 16.
[43] Statement of Evidence of Ian Francis Millner dated 3 May 2019, para 6.19.

effective way of achieving the objective of PC1. Accordingly, I consider that council drains ought to be subject to the same 1m setback as other waterbodies.

146. A further issue is the waterbodies to which the stock exclusion and setback requirements apply. The notified version of PC1 captured a wider range of waterbodies than the Sustainable Dairying Water Accord. The 42A report recommends amendments to include intermittent waterways, with the option to limit waterways to those with an unvegetated bed. I consider that a more objective standard is the Accord waterways, as proposed in FFNZ's submission.

147. In conclusion, I consider that a 1m setback (as the catchment-wide default) ought to apply to all waterbodies that are greater than 1m wide and 30cm deep, and provided the stocking rate is greater than 18 stock units (provided that alternative actions can be proposed in a tailored FEP). In my opinion, this would be the most appropriate regulatory regime (in terms of s32) for achieving the desired water quality outcome.

PRIORITISATION

148. The s32 report explains that the intention of the staged and prioritised approach adopted in PC1 was to prioritise intervention efforts to those areas where water quality needs the most improvement.[44] However, the effect of amendments recommended in the 42A report is to target almost all of the sub-catchments (without consideration of which ones need the most water quality improvement) and to shorten the timeframe for achieving improvements.

149. As explained in Mr Matheson's evidence, the recommended re-prioritisation of several catchments will result in 70% of farms being categorised as Priority 1 and this greatly increases the number of farms requiring an FEP in the first tranche.[45] He raises concerns about a likely severe shortage of CFEPs to prepare FEPs. This would be even worse if the proposal in the 42A report for all dairy farms to be treated as Priority 1 was adopted.

150. Dr le Miere raises the issue of the timeframe for implementation of PC1.[46] A 10 year timeframe from the date of notification of PC1 was adopted i.e. 2026. The effect of the delays following the notification of PC1 is that three years have already passed. With a Council decision on PC1 due in April 2020, appeals being lodged next year

[44] Section 32 report, page 137.
[45] Statement of Evidence of Lee Antony Matheson dated 15 February 2019, para 8.3.
[46] Statement of Evidence of Paul Frederick le Miere dated 3 May 2019, para 32.

but presumably not heard until 2021 (at the earliest), it could be several years until PC1 becomes operative.

151. One effect of the recommended changes to PC1 is that farms in Priority 1 catchments will be required to obtain resource consents within six months of PC1 becoming operative (assuming it is not operative before September 2021, which seems unlikely). In my opinion, it is very unlikely that farmers will apply for resource consent before PC1 becomes operative because they are likely to be unwilling to spend money obtaining a FEP and resource consent when there is a real risk that the rules (or at lease contents of FEPs) might change. The result might be a situation where say 70% of the 5,000 farmers are required to obtain FEPs and resource consents within six months. The closer this date gets to the dates for Priority 2 and 3 catchments, the more pressure this places on CFEPs and Council. In my view, this creates a very real risk of regulatory failure.

152. In my opinion, there is a reasonably straightforward solution – remove the dates.

153. PC1 was drafted with a focus on dates e.g. dates for Priority 1, 2 and 3 sub-catchments, 2026 date for this plan change etc. Since notification, these dates have created difficulty due to unforeseen delays, the volume of submitters and uncertainty around how long the Schedule 1 process and appeals will take. The approach to date has been to extend the dates and hope we will be able to achieve them. However, in my opinion there is no compelling reason in planning terms to retain the dates.

154. It appears to be accepted by the majority of parties to PC1 that we are on an 80 year journey, and that this plan change is the first step of that journey. Rather than fixating on precise dates that are already proving to be problematic, I consider that a more effective and efficient approach would be to require FEPs for Priority 1 catchments to be lodged with Council within two years of PC1 becoming operative. Priority 2 catchments could be within three years and Priority 3 within four years.

155. I also consider that there is no need to fixate on the 2026 date. That date is creating extraordinary and, in my view, unnecessary pressure on Council and industry to process a huge number of FEPs and consents in a short period of time. Under the RMA, plan changes are subject to review every 10 years. Regional plans are also subject to review following the implementation of a national policy statement.

156. There is currently an expectation that there will be a new national policy statement for freshwater management as part of the Government's freshwater package. This

may trigger a review of and need to change the regional plan before the normal 10 year review.

157. In my view, these triggers are more appropriate than the adoption of a seemingly arbitrary "end date" of 2026. It would also help to address the significant implementation issue by providing for the adoption of a reasonable timeframe for implementation of FEPs, such as a date for Priority 1 catchments of 2 years following PC1 becoming operative.

158. I have proposed amendments to the controlled activity rule in Annexure GE2 to illustrate how this could be addressed in the context of FFNZ's proposed controlled activity rule. Alternatively, they could be addressed by similar amendments to the permitted activity rule 3.11.5.1A recommended in the 42A report.

159. With regards to the dates in Schedule B (which is relied upon to calculate the NRP), I consider that there is merit in properties obtaining NRPs sooner rather than later, and having some certainty around when that will be. This is because the 75th percentile reductions rely on calculating the dairy N curves.

160. However, there is a risk in that Schedule B, and the entire NRP approach, is the subject of submissions and in all likelihood appeals and that come March 2022 there is uncertainty as to whether the NRP provisions will still exist. Unnecessary cost would therefore have been imposed on farmers if they were required to obtain NRPs that needed to be re-done or were no longer required once appeals were resolved.

161. Accordingly, my view is that the dates in Schedule B should be deleted and a more pragmatic solution might be that Priority 1 sub-catchments must obtain NRPs within 12 months of PC1 becoming operative, Priority 2 within 2 years and Priority 3 within three years.

EQUITY BETWEEN POINT SOURCE AND DIFFUSE DISCHARGES

162. One of FFNZ's principles for PC1 is consistency in approach between urban and rural; point source and diffuse discharges.[47] I have some concerns that there is a lack of consistency or equity, particularly when considering consent duration and management of discharges.

163. It appears to be accepted that management of both point source and diffuse discharges is necessary to achieve the short term water quality attribute states. As discussed with the Hearing Panel during questioning at the Topic 1 hearing, I have

[47] FFNZ's submission on Variation 1, page 10.

a concern with an interpretation of Objective K of the Vision & Strategy such that any location along the Waikato River must be safe to swim in and take food from regardless of the existing environment. This interpretation will pose significant challenges for point source dischargers and diffuse dischargers alike.

164. I note that the recommendation (which I support) in the 42A report[48] to introduce a new permitted activity rule to authorise diffuse discharges would seem to bring this issue to a head, given that the rule imports the language of s107(1) of the RMA which allows for reasonable mixing to occur in receiving water.

165. I have no particular concerns with the provisions of PC1 as they specifically relate to point source discharges, apart from a general concern as to the inclusion of references to the numeric 80 year targets in Policy 12.[49] On that basis, I support Policy 12 as amended by FFNZ's submission to reflect its position on Objective 1 (I have set this out, together with the other policies and method I consider are necessary to achieve equity between diffuse and point source discharges in **Appendix GE5** of my evidence).

166. I am however of a view that because all of the discharges in the catchment contribute to adverse effects and achievement of the desired water quality attribute states, PC1 needs to be consistent in its approach between point source discharges and diffuse discharges. The notified version of PC1 is not.

167. At the time of consent renewal, point source discharges are not required to "minimise" every contaminant but instead they are assessed under the Best Practicable Option ("BPO") framework. They have the ability to offset contaminants and they have the ability to seek consent terms in excess of 25 years.

168. In contrast, under the notified version of PC1 diffuse discharges are required to reduce and minimise all contaminants. They do not have the ability to offset and are very unlikely to be granted consent unless they can show all contaminants will be reduced. In my opinion, the amendments proposed by the 42A report go even further e.g. farms in the 50th to 75th percentile for N leaching are required to make "real and enduring" reductions and the amendments to Policy 4 seem to suggest that the duration of consents will be short (particularly for properties in priority 1 sub-catchments).

[48] 42A report, page 46
[49] My concerns more generally with the numeric 80 year targets are addressed in my Block 1 hearing evidence

169. I do not suggest that an identical approach needs to be adopted for point source and diffuse discharges. Rather, from a fairness and effects perspective, it is appropriate in my view that the approaches be similar. Hence, I support the amendments sought in the FFNZ's submission that seek to allow for:

a. Consent terms exceeding 25 years where similar standards to those applied to point source discharges consents for similar terms are met (through provision of a new Policy 12A and amendments to Policy 13).

b. Consideration of all sources of contaminants when progress towards the 10 year water quality targets is assessed.

c. Catchment Profiles (produced under new Method 3.1.4.5A) to hold details on both diffuse and point source discharges.

170. In my opinion, the recommendations in the 42A report perpetuate the inconsistency in the approach towards point source and diffuse discharges. The purpose of the recommended amendments to Policy 4 is not clear but the effect is to arguably shorten consent terms and/or make consents for farming more stringent. In particular the addition of the following wording:[50]

> To grant resource consents that authorise farming activities for a duration that will enable further reductions in contaminant losses to be implemented through replacement resource consents rather than by way of a review of consent conditions; unless the application demonstrates clear and enduring ongoing reductions of contaminant losses beyond those imposed in response to the short-term water quality attribute states in Table 3.11-1 and the property is not in a Priority 1 sub-catchment.

171. What I take from this somewhat unclear wording is a drive toward generally shorter duration resource consents for farming activities. I question whether at the time a resource consent application is prepared "clear and enduring ongoing reductions in contaminant losses" will be able to be demonstrated to a degree that will be sufficient to allow a longer consent duration to be applied. PC1 makes no link between the short term water quality attribute states in Table 3.11-1 and property level discharges, so there is no ability to assess whether reductions proposed on a particular property go beyond those imposed in response to Table 3.11-1. I also question the rationale for excluding Priority 1 sub-catchments.

172. In addition there does not appear to be scope to make such amendments. The submission points relied upon are those made by FFNZ and the Fertiliser Association of New Zealand ("FANZ"). However, those submission points seek

[50] 42A report, page 32.

longer terms not shorter durations, and propose no restriction on Priority 1 sub-catchments:

a. FFNZ's submission point PC1-12754 seeks amendments to provide for a minimum consent term of 25 years, as well as consideration of the magnitude and significance of investment made in contaminant reduction measures.

b. FANZ's submission point PC1-11176 seeks a consent term exceeding 25 years where the applicant demonstrates the approaches in Policies 1 to 4 will be met and the magnitude and significance of investment in contaminant reduction measures.

173. One practical effect of issuing what will amount to thousands of resource consents with short durations[51] will be to greatly increase the workload on both the WRC regulatory team and professional CFEPs, of which there will always be a limited number.[52] This very real issue is already raised by the 42A report authors in the discussion of the merits of deleting permitted status for farming activities in a CSS and replacing it with restricted discretionary status. This again raises the risk of regulatory failure, an issue I have discussed above.

174. In my opinion, the recommended amendments to Policy 4 provide little certainty for those seeking diffuse discharge consents. They do not recognise matters such as the level or significance of investment, or the need to provide certainty for investment where contaminant reduction measures are proposed to be considered in determining an appropriate consent duration in the same manner as can be done under Policy 13 for point source discharges.

175. Accordingly, I do not support the recommended amendments to Policy 4 with regards to consent duration for diffuse discharges. In my opinion, it remains clearer and more efficient for plan users to have all matters dealing with consent duration dealt with under Policy 13, in a manner that is equitable between point source and diffuse discharges, along the lines of the original relief sought for Policy 13 (in tandem with the relief sought for Policy 12) as set out in Appendix GE5.

CONCLUSION

176. In my opinion, the 42A report proposes numerous and significant changes to the notified version of PC1 which do appear to have been appropriately assessed

[51] This could be 5,000 or more if all properties over 20ha are required to obtain resource consent.
[52] As discussed above, this is an issue that has already been raised by Mr Matheson on behalf of NZIPIM.

against the relevant planning and statutory framework (most notably, s32). For example, there appears to be no (or insufficient) consideration of the potential environmental, social and economic effects from nitrogen reductions by those farms between the 50th and 75th percentile.

177. A fundamental concern I have is that the combined effect of the recommendations to change the activity status for many farming activities, require resource consents for FEPs prepared pursuant to a CSS, and reprioritise catchments (including requiring all dairy farming activities to be treated as priority 1) is to create a significant risk of regulatory failure. For example, I can foresee a situation of a shortage of CFEPs and Council not being able to process the likely volume of restricted discretionary resource consents in order to ensure the timeframes within PC1 are met.

178. In my view, the most effective and efficient means of achieving the staged implementation of the Vision & Strategy, with PC1 focusing on 10% improvement, ought to be adopted.

G Eccles

APPENDIX GE1
FFNZ PROPOSED CHANGES TO POLICY 1

Policy 1: ~~Manage d~~ Diffuse discharge management ~~s of nitrogen, phosphorus, sediment and microbial pathogens~~/Te Kaupapa Here 1: Te whakahaere i ngā rukenga roha o te hauota, o te pūtūtae-whetū, o te waiparapara me te tukumate ora poto

Reduce ~~Manage and require reductions in~~[29] catchment-wide and[30] sub-catchment-~~wide~~ diffuse[31] discharges of nitrogen, phosphorus, sediment and microbial pathogens, by:

a1. Requiring all farming activities to operate at Good Farming Practice~~, or better~~; and[32]

a2. Establishing, where possible, a Nitrogen Reference Point for all properties or enterprises; and[33]

a. Enabling activities with a low level of contaminant discharge to water bodies ~~provided those discharges do not increase~~[34]; and

b. Requiring farming activities with moderate to high levels of contaminant discharge to water bodies to reduce their discharges proportionate to the amount of (2016) discharge and the water quality improvements required in the subcatchment[35]; and

b1. Calculating the 75th percentile and 50th percentile nitrogen leaching values and requiring farmers with a Nitrogen Reference Point greater than the 75th percentile to reduce nitrogen loss to below the 75th percentile ~~and farmers with a Nitrogen Reference Point between the 50th and 75th percentile to demonstrate real and enduring reductions of nitrogen leaching, with resource consents specifying an amount of reduction or changes to practices required to take place; and~~[36]

b2. Where Good Farming Practices are not adopted, to specify controls in a resource consent that ensures contaminant losses are appropriately managed ~~will be reducing~~;[37]

~~b3. Except as provided for in Policies [1(a) and] 16, generally granting only those land use and discharge consent applications that demonstrate clear and enduring reductions in diffuse discharges of nitrogen, phosphorus, sediment and microbial pathogens; and~~[38]

~~b4. Except as provided for in Policies [1(a) and] Policy 16, generally not granting land use consent applications that involve a change in the use of the land, or an increase in the intensity of the use of land, unless the application demonstrates clear and enduring reductions in diffuse discharges of nitrogen, phosphorus, sediment and microbial pathogens; and~~[39]

c. Progressively excluding cattle, horses, deer and pigs from rivers, streams, drains, wetlands and lakes.

APPENDIX GE2: FFNZ PROPOSED CHANGES TO CONTROLLED ACTIVITY RULE

Rule 3.11.5.4 - Controlled Activity Rule – Farming activities with a Farm Environment Plan not under a Certified Industry Scheme

Except as provided for in Rule 3.11.5.1 and Rule 3.11.5.2 the use of land for farming activities (excluding commercial vegetable production) where that land use is not registered to a Certified Industry Scheme, and the associated diffuse discharge of nitrogen, phosphorus, sediment and microbial pathogens onto or into land in circumstances which may result in those contaminants entering water is a permitted activity until:

1. ~~1 January 2020~~ ~~1 September 2021~~ Two years from the date on which this plan change becomes operative for properties or enterprises in Priority 1 sub-catchments listed in Table 3.11-2, and properties or enterprises with a Nitrogen Reference Point greater than the 75th percentile nitrogen leaching value;

2. ~~1 January 2023~~ ~~1 September 2024~~ Three years from the date on which this plan change becomes operative for properties or enterprises in Priority 2 sub-catchments listed in Table 3.11-2;

3. ~~1 January 2026~~ Four years from the date on which this plan change becomes operative for properties or enterprises in Priority 3 sub-catchments listed in Table 3.11-2;

Subject to the following conditions:

4. The property is registered with the Waikato Regional Council in conformance with Schedule A; and

5. A Nitrogen Reference Point is produced for the property or enterprise in conformance with Schedule B; and

After the dates set out in 1), 2) and 3) above the use of land shall be a controlled activity (requiring resource consent), subject to the following standards and terms:

a. A Farm Environment Plan has been prepared in conformance with Schedule 1 and has been approved by a Certified Farm Environment Planner, and is provided to the Waikato Regional Council at the time the resource consent application is lodged by the dates specified in I-III below; and

b. The property is registered with the Waikato Regional Council in conformance with Schedule A; and

c. A Nitrogen Reference Point is produced for the property or enterprise in conformance with Schedule B and is provided to the Waikato Regional Council at the time the resource consent application is lodged; and

d. The diffuse discharge of nitrogen from the property or enterprise, as measured by the five-year rolling average annual nitrogen loss as determined by the use of the current version of OVERSEER®, does not increase beyond the property or enterprise's Nitrogen Reference Point, unless other suitable mitigations are specified; and

e. Where the Nitrogen Reference Point exceed the 75th percentile nitrogen leaching value, actions, timeframes and other measures are proposed to ensure the diffuse discharge of nitrogen is reduced so that it does not exceed the 75th percentile nitrogen leaching value by 1 July 2028; and

f. If the property is subdivided, a new Nitrogen Reference Point shall be calculated for all of the lots created by the subdivision in conformance with Schedule B for each individual lot.

~~d.~~ g. The stock exclusion and setback requirements in Schedule C are complied with ~~Cattle, horses, deer and pigs are excluded from water bodies in conformance with Schedule C.~~

h. The use of land shall be undertaken generally in accordance with the actions and timeframes specified in the Farm Environment Plan; and

i. The Farm Environment Plan provided under condition e. may be amended in accordance with the procedure set out in Schedule 1 and the use of land shall thereafter be undertaken in accordance with the amended plan; and

j. A copy of the Farm Environment Plan amended in accordance with condition f. shall be provided to the Waikato Regional Council within 30 working days of the date of its amendment.

Matters of Control

Waikato Regional Council reserves control over the following matters:

~~i. The content of the Farm Environment Plan.~~

~~ii. The actions and timeframes for undertaking mitigation actions that maintain or reduce the diffuse discharge of nitrogen, phosphorus, sediment or microbial pathogens to water or to land where they may enter water.~~

~~iii. The actions, timeframes and other measures to ensure that the diffuse discharge of nitrogen from the property or enterprise, as measured by the five-year rolling average annual nitrogen loss as determined by the use of the current version of OVERSEER®, does not increase beyond the property or enterprise's Nitrogen Reference Point, unless other suitable mitigations are specified.~~

~~iv. Where the Nitrogen Reference Point exceeds the 75th percentile nitrogen leaching value, actions, timeframes and other measures to ensure the diffuse discharge of nitrogen is reduced so that it does not exceed the 75th percentile nitrogen leaching value by 1 July 2026.~~

v. The term of the resource consent.

vi. The monitoring, record keeping, reporting and information provision requirements for the holder of the resource consent to demonstrate and/or monitor the use of land generally in accordance ~~compliance~~ with the Farm Environment Plan.

~~vii. The timeframe and circumstances under which the consent conditions may be reviewed or the Farm Environment Plan shall be amended.~~

~~viii. Procedures for reviewing, amending and re-approving the Farm Environment Plan.~~

Notification:

Consent applications will be considered without notification, and without the need to obtain written approval of affected persons.

APPENDIX GE3: FFNZ PROPOSED CHANGES TO POLICY 6 AND RULES 3.11.5.6 and 3.11.57

~~**Policy 6:** Restricting land use change~~

~~Except as provided for in Policy 16, land use change consent applications that demonstrate an increase in the diffuse discharge of nitrogen, phosphorus, sediment or microbial pathogens will generally not be granted.~~

~~Land use change consent applications that demonstrate clear and enduring decreases in existing diffuse discharges of nitrogen, phosphorus, sediment or microbial pathogens will generally be granted.~~

Policy 6: Restricted Discretionary and Discretionary Activities

Grant consent to applications for farming activities that apply for consent under Rule 3.11.5.6 (Restricted Discretionary Activity) or Rule 3.11.5.7 (Discretionary Activity) that can demonstrate the following:

a. The Most Practicable Actions to manage the discharge of nitrogen, phosphorous, sediment and microbial pathogens on a proportional basis will be implemented by the farm operator; and

b. Monitoring, record keeping, reporting and information provision to the Waikato Regional Council by the consent holder will be undertaken in an efficient and effective manner; and

c. Where consent is sought to allow an exceedance of permitted or controlled activity nitrogen limits that the risks associated with phosphorous, sediment and microbial pathogen discharges from the farming activity can be reasonably managed.

Rule 3.11.5.6 - Restricted Discretionary Activity Rule – The use of land for farming activities/Te Ture mō ngā kōwhiringa mahi e herea ana – te whakamahinga o te whenua mō ngā mahinga pāmu

The use of land for farming activities that does not comply with the conditions, standard or terms of Rules 3.11.5.1 to 3.11.5.5A and the associated diffuse discharge of nitrogen, phosphorus, sediment and microbial pathogens onto or into land in circumstances which may result in those contaminants entering water is a restricted discretionary activity (requiring resource consent).

Waikato Regional Council restricts its discretion over the following matters:

i. Cumulative effects of the farm enterprise on water quality of the sub-catchment within which the farming activity occurs and, where relevant, the wider catchment of the Waikato and Waipa Rivers

ii. The diffuse discharge of nitrogen, phosphorus, sediment and microbial pathogens from the farm enterprise, taking into account:

(a) the relative proportion of nitrogen, phosphorus, sediment and microbial pathogens that the particular discharge contributes to the catchment load; and

(b) the characteristics of the sub-catchment within which the subject farming enterprise is located as set out in the relevant Sub-catchment Management Plan and Catchment Profile produced by Waikato Regional Council; and

(c) the scale and significance of the risk from each contaminant discharge to the achievement of the values and uses for the Waikato and Waipa Rivers;

(d) the relative contribution of the industry sector within which the farming enterprise belongs to the likely achievement of the short term targets^ in Objective 3 or the progression towards the outcomes anticipated by the Vision & Strategy referred to in Objective 1; and

(e) the resources reasonably available to the farming enterprise.

iii. The need for and the content of a Farm Environment Plan including the significance of any failure to comply with Schedule 1 in the context of the matters listed in paragraph ii above.

iv. The term of the resource consent.

v. The monitoring, record keeping, reporting and information provision requirements for the holder of the resource consent.

vi. The time frame and circumstances under which the consent conditions may be reviewed.

vii. If the property is subdivided, the Nitrogen Reference Point for all of the lots created by the subdivision by reference to the significance of any failure to comply with Schedule B for each individual lot in the context of the matters referred to in paragraph ii above.

~~vii~~.viii. The significance of any failure to address or comply with the matters addressed by ~~contained in~~ Schedules A, B and C, in the context of the matters listed in paragraph ii above.

Notification:

Consent applications will be considered without notification, and without the need to obtain written approval of affected persons.

Rule 3.11.5.7 - ~~Non-Complying~~ Discretionary Activity Rule – Land Use Change

Notwithstanding any other rule in this Plan, any of the following changes in the use of land from that which was occurring at 22 October 2016 within a property or enterprise located in the Waikato and Waipa catchments, where ~~prior to 1 July 2026~~ the change exceeds a total of 4.1 hectares:

1. Woody vegetation to farming activities; or

2. Any livestock grazing other than dairy farming to dairy farming; or

3. Arable cropping to dairy farming; or

4. Any land use to commercial vegetable production except as provided for under standard and term g. of Rule 3.11.5.5

is a ~~non-complying~~ discretionary activity (requiring resource consent) ~~until 1 July 2026.~~

Notification:

Consent applications will be considered without notification, and without the need to obtain written approval of affected persons. ~~subject to the Council being satisfied that the loss of contaminants from the proposed land use will be lower than that from the existing land use.~~

Information Requirements - Restricted Discretionary and Discretionary Activities

Applications for a Restricted Discretionary Activity under Rule 3.11.5.6 or a Discretionary Activity under Rule 3.11.5.7 shall, at minimum, provide the following information:

a. An analysis of the Most Practicable Actions to manage the discharge of nitrogen, phosphorous, sediment and microbial pathogens on a proportional basis that will be implemented by the operator of the farm enterprise; and

b. A description of the monitoring, record keeping, reporting and information provision methods that will be implemented by the consent holder to ensure efficient and effective communication with the Waikato Regional Council on consent related matters; and

c. Where consent is sought to allow an exceedance of permitted or controlled activity nitrogen limits, an analysis and description of how the risks associated with discharges from the farm enterprise of phosphorous, sediment and microbial pathogen onto or into land in circumstances which may result in those contaminants entering water can be reasonably managed; and

d. Information setting out the value of existing investment in the farming enterprise to which the consent application relates.

APPENDIX GE4: COMPARISON OF CHANGES SOUGHT TO SCHEDULE C STANDARDS

	PC1	42A	FFNZ	Water Accord[53]
Stock exclusion				
Non tailored catchment-wide actions	**New Fences** so stock cannot be within **1m of bed** of water body (excluding constructed wetland) For Permitted Activity rule 2 - new fences ensure stock not within 3m from water bodies (excluding constructed wetlands and drains). For rest in FEP stating where practicable minimum grazing setbacks from water bodies for stock exclusion of - 1m for land with slope of less than 15° and - 3m for land with slope between 15° and 25°. - Mitigation measures for slope exceeding 25° and	Stock cannot be within: a. 1m of the outer edge of the bed for land with less than 15° b. 3m of the outer edge of the bed for land with between 15° and 25° c. 10m of the outer edge of the bed for watercourses that are the responsibility of a territorial authority or Waikato Regional Council for maintenance purposes.	Stock excluded on land that is grazed at a stocking rate equal to or exceeding **18 stock units** per hectare within **1m of bed** of water body. -or- in FEP how addressed by an alternative mechanism	Dairy cattle excluded from drains, waterways and significant wetlands.

[53] Sustainable Dairying: Water Accord

	PC1	42A	FFNZ	Water Accord[53]
	where stream fencing is impracticable.			
Definition of stock	Stock means cattle, horses, deer and pigs.	Same as PC1	Same as PC1	Dairy cattle to be excluded
Waterbody	1. Any river or drain that continually contains surface water. 2. Any lake and any wetland (including constructed wetland).	1. The bed of a river (including any stream an modified river or stream) or artificial watercourse that is permanently or intermittently flowing [OPTION TO ADD and where the bed is predominantly unvegetated and comprises exposed fine sediment, sand, gravel, boulders or similar material or aquatic vegetation] and 2. The bed of any lake 3. Any wetland, including a constructed wetland.	1. Any river or drain that continually contains surface water and is wider than one metre and deeper than 30cm. 2. Any lake that is greater than 1ha in area and any significant wetland, excluding a constructed wetland	1. Waterways and drains greater than 1m in width and deeper than 30cm 2. Significant wetlands Water way is " a lake, spring, river or stream (including streams that have been artificially straightened but exclude drains) that permanently contains water and any significant wetland. For the avoidance of doubt, this definition does not include ephemeral watercourse that flow during or immediately

	PC1	42A	FFNZ	Water Accord[53]
				following extreme weather events.
Definition of drain	Drain: For the purposes of Chapter 3.11, means an artificially created channel designed to lower the water table and/or reduce surface flood risk but does not include any modified (e.g. straightened) natural watercourse.	Drain: For the purposes of Chapter 3.11, means an artificially created **open** channel designed to lower the water table and/or reduce surface flood risk but does not include any modified (e.g. straightened) natural watercourse.	Support 42A report changes	An artificially created channel designed to lower the water table and/or reduce surface flood risk but does not include any modified (e.g. straightened) natural watercourse.
Exclusion method	Fence or other stock proof natural barrier formed by topography or vegetation	Fence or other stock proof natural **or constructed** barrier formed by topography or vegetation.	Support 42A report changes	Effectively barred from access to water and to the banks of a waterway either through a natural barrier (such as a cliff) or a permanent fence, except for any regular stream crossing point.
Stock crossing	Stock must not be permitted to enter onto or pass across the bed of the water body, except when using a livestock crossing structure. Exceptions:	Stock must not enter onto or pass across the bed of the water body, except when using a livestock crossing structure [OPTION	Consider provision ought to provide for stock to be driven across as proposed in 42A report “option”	Allowed at a point on a waterway or drain where dairy cattle cross to access the milking shed, then return

	PC1	42A	FFNZ	Water Accord[53]
	1. Where the entry onto or passing across the bed of the water body is by horses that are being ridden or led. 2. By a feral animal.	TO ADD or when they are being supervised and actively driven across a water body in cone continuous movement provided no more than on crossing per week occurs.]. Exceptions: 1. Where the entry onto or passing across the bed of the water body is by horses that are being ridden or led. 2. Constructed ponds or constructed wetlands in which deer or pigs wallow that are located at least 10m away and which are not connected to an overland flow path to a water body.		following milking more than once per month.
Cultivation				
Non tailored standard	No cultivation within 5m of the bed of a waterbody where cultivation is allowed.	Where cultivation is allowed minimum cultivation setbacks of 5m.	Cultivation set back 1m from water bodies or how addressed by an alternative mechanism.	N/a

	PC1	42A	FFNZ	Water Accord[53]
Degree	a. slopes over 15° avoid cultivation unless discharges to water bodies can be avoided b. slopes less than 15° adverse effects will be mitigated through erosion and sediment controls.	a. slopes over 15° avoid cultivation unless discharges to water bodies can be avoided b. slopes less than 15° adverse effects will be mitigated through erosion and sediment controls.	slopes over 25° asses most practicable action to mitigate adverse effects including through erosion and sediment controls.	N/a
Waterbody	**From Regional Plan** Waterbody means fresh water or geothermal water in a river, lake, stream, pond, wetland, or aquifer, or any part thereof, that is not located within the coastal marine.	Waterbody means fresh water or geothermal water in a river, lake, stream, pond, wetland, or aquifer, or any part thereof, that is not located within the coastal marine.	Waterbody means any river or drain that continually contains surface water and is wider than one metre and deeper than 30cm and any lake that is greater than 1ha in area and any significant wetland, excluding a constructed wetland.	N/a

	PC1	42A	FFNZ	Water Accord[53]
Drain	Drain: For the purposes of Chapter 3.11, means an artificially created channel designed to lower the water table and/or reduce surface flood risk but does not include any modified (e.g. straightened) natural watercourse.	Drain: For the purposes of Chapter 3.11, means an artificially created **open** channel designed to lower the water table and/or reduce surface flood risk but does not include any modified (e.g. straightened) natural watercourse.	Support 42A report changes.	N/a
Cultivation	Cultivation: For the purposes of Chapter 3.11, means preparing land for growing pasture or a crop and the planting, tending and harvesting of that pasture or crop, but excludes: a. direct drilling of seed. b. no-tillage practices c. recontouring land. d. forestry.	Same as PC1	Cultivation: For the purposes of Chapter 3.11, means preparing land for growing pasture or a crop and the planting, tending and harvesting of that pasture or crop, but excludes: a. direct drilling of seed. b. farming practices that do not require tillage or disturbance of the ground including but not limited to haymaking and topping of pasture	N/a

	PC1	42A	FFNZ	Water Accord[53]
			c. recontouring land. d. forestry.	
Setback	Setback: means the distance from the bed of a river or lake, or margin of a wetland	Same as PC1	Same as PC1	N/a

APPENDIX GE5: FFNZ PROPOSED CHANGES TO ADDRESS EQUITY BETWEEN POINT SOURCE DISCHARGES AND DIFFUSE DISCHARGES (POLICIES 12, 12A, 13 AND METHOD 3.11.4.5A)

Policy 12: Additional considerations for point source discharges in relation to water quality targets/Te Kaupapa Here 12: He take anō hei whakaaro ake mō ngā rukenga i ngā pū tuwha e pā ana ki ngā whāinga ā-kounga wai

Consider the contribution made by a point source discharge to the nitrogen, phosphorus, sediment and microbial pathogen catchment loads and the impact of that contribution on the likely achievement of the short term targets^ in Objective 3 or the progression towards the outcomes anticipated by the Vision & Strategy and values^ referred to in Objective 1 ~~80-year targets^ in Objective 1~~, taking into account:

a. The relative proportion of nitrogen, phosphorus, sediment or microbial pathogens that the particular point source discharge contributes to the catchment load; and

b. Past technology upgrades undertaken to model, monitor and reduce the discharge of nitrogen, phosphorus, sediment or microbial pathogens within the previous consent term; and

c. The ability to stage future mitigation actions to allow investment costs to be spread over time and meet the water quality targets^ specified above or make progress towards the outcomes anticipated by the Vision & Strategy and values^; and

d. The diminishing return on investment in treatment plant upgrades in respect of any resultant reduction in nitrogen, phosphorus, sediment or microbial pathogens when treatment plant processes are already achieving a high level of contaminant reduction through the application of the Best Practicable Option*.

Policy 12A: Additional considerations for diffuse discharges in relation to water quality targets

Consider the contribution made by a diffuse discharge to the nitrogen, phosphorus, sediment and microbial pathogen catchment loads and the impact of that contribution on the likely achievement of the short term targets^ in Objective 3 or the progression towards the outcomes anticipated by the Vision & Strategy and values ^referred to in Objective 1, taking into account:

a. the characteristics of the sub-catchment within which the subject farm enterprise is located as set out in the Catchment Profile and any sub-catchment management plan (including load reductions achieved through whole of sub-catchment actions); and

b. the relative contribution of the industry sector within which the farming enterprise belongs to the likely achievement of the short term targets^ in Objective 3 or the progression towards the outcomes anticipated by the Vision & Strategy and values^ in Objective 1; and

c. the resources reasonably available to the farm enterprise; and

d. investment in past on farm and edge of field contaminant mitigations including technology upgrades to model, monitor and reduce the discharge of nitrogen, phosphorous, sediment and microbial pathogens where those mitigations are already achieving a high level of contaminant reduction through the application of the Most Practicable Action.

Policy 13: ~~Point sources~~ Consent duration/Te Kaupapa Here 13: Te roa o te tukanga tono whakaaetanga mō te pū tuwha

When determining an appropriate duration for any consent granted consider the following matters:

a. A consent term exceeding 25 years, where the applicant demonstrates the approaches set out in Policies 11 and 12 or 12A will be met; and

b. The magnitude and significance of the investment made or proposed to be made in contaminant reduction measures and any resultant improvements in the receiving water quality; and

c. The need to provide appropriate certainty of investment where contaminant reduction measures are proposed (including investment in treatment plant upgrades or land based application technology or farm system changes e.g. retiring land, feed pads etc).

3.11.4.5A Catchment Profiles

Waikato Regional Council will develop Catchment Profiles for the sub-catchments listed in Table 3.11-2. Each Catchment Profile shall be developed and made publicly available a minimum of two years before the Farm Environment Plans in the sub-catchment(s) to which it relates are required to be provided to the Waikato Regional Council.

A Catchment Profile shall contain all of the information relevant to water quality in a sub-catchment(s), including but not limited to:

a. Sub-catchment targets and the current state for each contaminant in each sub-catchment.

b. Sector and other (including pest and natural sources of contaminants) contributions toward sub-catchment targets.

c. Consented discharges and takes in the sub-catchment.

d. Any operative sub-catchment management plans.

e. Information about adjoining/related catchments, relationships between sub-catchments or opportunities to coordinate with related sub-catchments.

f. Any zones that the sub-catchment is divided into to represent farming systems or land uses (including activities generating point source discharges) of a consistent type (in terms of contaminant loss).

f. Information about hot spots or critical source areas within the sub-catchment including geophysical and climate characteristics e.g. rainfall or soil type, or historical events e.g. landslips.

g. Freshwater accounting system, monitoring plan and any other information generated pursuant to Methods 3.11.4.7 or 3.11.4.10.