IN THE MATTER	**of the Resource Management Act 1991**
AND	
IN THE MATTER	**of the hearing of submissions on Proposed Plan Change 1 (and Variation 1) to the Waikato Regional Plan**
	TOPIC 3
BY	**FEDERATED FARMERS OF NEW ZEALAND INC, 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**

LEGAL SUBMISSIONS ON BEHALF OF FEDERATED FARMERS ON HEARING TOPIC 3

16 September 2019

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INTRODUCTION AND EVIDENCE

1. These legal submissions are filed on behalf of Federated Farmers of New Zealand (**FFNZ**).

2. For the Block 3 hearing, FFNZ has filed policy, farm systems and planning evidence on Topic 3, as well as rebuttal evidence in respect of the science Joint Witness Statement (**JWS**) and the Waikato Regional Council Memorandum dated 5 July 2019. A brief summary of that is set out in the next few paragraphs.

3. The focus of Mr Millner's evidence is on Farm Environment Plans (**FEP**s). He generally supports the amendments to Schedule 1 proposed in the s42A report. He identifies the importance of the Certified Industry Scheme (**CIS**) and, in recognition of the benefits of retaining that as a permitted activity, proposes a less tailored or flexible schedule for preparing FEPs (in the event that the Hearing Panel concludes that Schedule 1 is not appropriate for FEPs as permitted activities).

4. Similarly, Mr Eccles' evidence focuses on FEPs and proposes what he considers to be an appropriate schedule for the preparation of FEPs. In recognition of the issues raised by the Hearing Panel about FEPs as permitted activities, he has proposed a "tick the boxes" Schedule 1A. Several other submitters proposed significant amendments to Schedule 1 (from minimum standards proposed by Fish & Game to a difference Schedule 1A by Fonterra). Mr Eccles evaluates these in his rebuttal evidence.

5. Mr Eccles has also provided rebuttal evidence on the science JWS. His primary concern with proposals in the JWS is the Hearing Panel's jurisdiction or scope to consider them. Since the filing of Mr Eccles' evidence, the Government has released a draft National Policy Statement and National Environmental Standard for consultation. As explained further below, our legal submission is that these documents ought to be given no legal weight and do not change the evidence or assessment contained in Mr Eccles' evidence.

6. Finally, Dr le Miere has focused in his primary evidence on quantifying the costs of various setback and fencing proposals and on providing background to the development of Good Farming Practice (**GFP**) (which is the focus of the s42A report changes to Schedule 1).

7. These legal submissions on Topic 3 and science JWS cover:

   a. Scope.

   b. Precautionary approach.

   c. Certified Sector Scheme as permitted activity.

SUMMARY

8. The issue of scope is relevant when considering the proposals contained in the science JWS. The purpose or objective of PC1 is to reduce four contaminants in the Waikato and Waipa River catchments. Accordingly, submissions that address the use of land and/or discharge of the four contaminants in these catchments will be on the plan change.

9. In our submission, proposed new attributes that directly respond and have a cause and effect relationship with any of the four contaminants may pass through the filter of the first limb of the *Clearwater* test. However, there remains a real concern that persons affected or potentially affected by changes to Table 3.11.1 have not had an opportunity to be heard. If the Hearing Panel were to determine there is scope to consider any of the amendments proposed in the science JWS, there is still a need for consideration as to whether these attributes should be included on their merits (and it is our submission that they should not).

10. The precautionary approach is an issue that has been raised by other parties. One of the objectives of the Vision & Strategy is to adopt a precautionary approach towards decisions that may result in significant adverse effects on the Waikato and Waipa Rivers and, in particular, those effects that threaten serious or irreversible damage to the Waikato River. It is submitted that this does not result in a requirement to adopt a precautionary approach, as

understood in RMA case law, in the drafting of PC1. It is submitted that, in the present circumstances, a need for caution or conservatism, over and above that provided for in the RMA, is not appropriate when considering the appropriate provisions for PC1.

11. In respect of the legal issue of whether FEPs as part of a CIS can be a permitted activity, I submit that Schedule 1 and the accompanying permitted activity rule is sufficiently certain and not inherently vague. The approach is one of a reasonable CFEP bringing an objective assessment. This assessment can be compared favourably with the assessment in *Watercare v Minhinnick*.[1] What is required from a CFEP is not a judicial decision but a certification by a professional.

12. In my submission, the real issue to be determined or resolved, is the tension between the planning preference for short and simple permitted activity rules and the benefits of providing for the Certified Industry Scheme as a permitted activity. In my submission, it is appropriate to provide for FEPs under a Certified Industry Scheme as a permitted activity status in light of the number of benefits of the Certified Industry Scheme and the evidence that no industry body is likely to be willing to provide a sector scheme if FEPs prepared under a sector scheme are not a permitted activity.

SCOPE

13. The first legal issue these submissions address is scope. This is an issue that arises in the context of various proposed amendments contained in the science JWS. It is submitted that most of these proposals are beyond the scope of PC1.

14. The term ‘scope’ in resource management is used to mean different things with differing legal elements. I distinguish the different definitions by using the following terms:

[1] *Watercare v Minhinnick* (1997) 3 ELRNZ 511; [1998] 1 NZLR 294; [1998] NZRMA 113; (CA)

a. ‘On the plan’ refers to the requirement that a submission must be on a proposed plan.

b. ‘Scope of submission’ refers to the requirement that the submitter must have referred to the provision or matter in his/her submission.

c. ‘Vires’ refers to the restricted jurisdictional power, duty and discretion of the Regional Council (and subsequently the Environment Court) to provide relief to matters raised in the submissions and in the notified plan.

15. These submissions set out the elements for ‘on the plan’ and examine whether additional attributes and changes to Table 3.11.1 sought by some submitters are “on the plan”.

16. It is settled law that the appropriate test is the principles identified by the High Court in *Palmerston North City Council v Motor Machinists Ltd (Motor Machinists)*[2] and the approach set out by William Young J in *Clearwater Resort Ltd v Christchurch City Council.*[3]

17. *Clearwater* established a bipartite test:[4]

a. a submission can only fairly be regarded as being on a plan change or variation if it addressed the extent to which the plan change or variation changes the pre-existing status quo; and

b. if the effect of regarding a submission as being on a plan change or variation would be to permit a planning instrument to be appreciably amended without real opportunity for participation by those potentially affected, that is a powerful consideration against finding the submission to be “on” the change.

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[2] *Palmerston North City Council v Motor Machinists Ltd* [2014] NZRMA 519 at [74]-[83].
[3] *Clearwater Resort Ltd v Christchurch City Council* HC Christchurch AP34/02, 14 March 2003.
[4] *Clearwater Resort Ltd v Christchurch City Council* HC Christchurch AP34/02, 14 March 2003 at [66].

First Limb: What is the change to the status quo?

18. To determine whether the first limb of the test has been met, we need to determine what changes to the pre-existing status quo are proposed by PC1 and then assess if the submission addresses the same field.

19. The explanatory note to PC 1 sets out the degree that PC1 alters the regional plan. It states:

> This document is a change to the Operative Waikato Regional Plan (WRP), to restore and protect water quality in the Waikato and Waipa Rivers by managing discharges of nitrogen, phosphorous, sediment and microbial pathogens to land in the catchment, where it may enter surface water or ground water or ground water and subsequently enter the rivers, or directly into a water body.

20. Turning to the contents of PC1 (as notified), the text of the provisions in light of their purpose and contexts emphasises that the ambit of PC1 is limited to change in the management of the four contaminants (nitrogen, phosphorous, sediment and E coli). I do not intend to evaluate the provisions one by one and rather refer to the analysis by Mr Eccles' in his evidence on science JWS.[5] Mr Eccles concludes that the ambit of PC1 is restricted to reducing discharge of the four contaminants from farming activities in the Waikato and Waipa River catchments. To double-check his conclusion, Mr Eccles then considers the history and scheme of PC1 and comes to a similar conclusion.[6]

Motor Machinists tests for first limb of Clearwater test

21. Although not a test itself, *Motor Machinists* sets out two helpful ways to analyse the first limb of the *Clearwater* test by posing questions that may be asked to determine whether a submission can reasonably be said to fall within the ambit of a plan change:[7]

> "In terms of the first limb of the test:

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[5] Statement of evidence of Grant Eccles on Science JWS dated 12 July 2019 at [4.4] – [4.7].
[6] Ibid at [4.5] – [4.8]
[7] *Motor Machinists* at [81].

> (i)Whether the submission raises matters that should have been addressed in the s 32 evaluation report? If so, the submission is unlikely to be within the ambit of the plan change.
>
> (ii)Whether the management regime in a plan for a particular resource is altered by the plan change? If not, then a submission seeking a new management regime for that resource is unlikely to be on the plan change.
>
> …"

22. A s32 report evaluates policy options to the extent changes are proposed in the plan to the status quo. The s32 report for PC1 evaluates the comparative efficiency and effectiveness of a mix of policy options to reduce the discharge of the four named contaminants.[8] The s32 report for PC1 has two sections: the first assesses the extent to which the objectives are the most appropriate way to achieve the purpose of the RMA,[9] and the second assesses whether the proposed provisions are the most appropriate way to achieving the objectives.[10] Section E.3 of the s32 report evaluates the appropriateness of provisions with regard to reducing the discharge of the four contaminants. The s32 report evaluates the effectiveness and efficiency of six different options to reduce the discharge of the four contaminants including the impact on the economic, cultural and social the costs. No options were evaluated for any other contaminant. Accordingly, using the s32 method as proposed in *Motor Machinists,* the ambit of the PC1 is restricted to the four contaminants.

23. *Motor Machinists* suggests another possible way to assess the first limb by asking whether the management regime is altered by the plan and whether the submission addresses that alteration. This type of analysis relates more readily to plan changes associated with zoning. Notwithstanding this, applying this assessment to PC1, the management regime altered by PC1 is to manage the land use and discharge of the four contaminants where they enter or may enter surface water or ground water in the Waikato and Waipa catchments. The rules of PC1[11] propose controls on activities that are intended to reduce the discharges of the four contaminants. The first six rules specifically refer to

[8] S32 Report at 2.2.7.
[9] S32 Report at D1.
[10] S32 Report at E1.
[11] As notified PC1

discharge of nitrogen, phosphorus, sediment and microbial pathogens and no other contaminants. The only rule that does not mention the four contaminants explicitly is the non complying activity rule for land use change (but the objective of that rule is to limit increases in the four contaminants that typically arise from the change to a more intensive land use).

24. In light of the evaluation above, I submit that, whichever analysis is used a similar conclusion is reached. The conclusion is that the ambit of PC1 is to reduce the discharges of four contaminants in the Waikato and Waipa catchments and a submission that addresses the use of land in a way that directly relates to these four contaminants and/or a discharge of the four contaminants will be on the plan change.

Incidental or consequential amendments

25. *Motor Machinists* discusses incidental or consequential amendments akin to those in Schedule 1, Clause 16(2) and considers that they may still comply with the first limb if they meet a specific condition.[12] Accordingly not every incidental or consequential amendment will comply with the first limb of the *Clearwater* test. The condition is that the incidental or consequential amendment requires no substantial further s32 analysis to inform affected persons of the merits.[13]

26. Mr Eccles' evidence on the science JWS explains the reasons he considers that there has not been an assessment of, or it is not possible to assess, the costs, risks and benefits of proposed amendments to attributes or new attributes, in terms of s32 or s32AA.[14] In my submission, this demonstrates that the nature of the changes are not incidental or consequential.

Second limb: Public participation

27. If a submission complies with the first limb of the *Clearwater* test then it is still subject to the second limb of the test. The second limb asks whether there is a real risk that persons directly or potentially directly affected by the additional

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[12] *Motor Machinists* at [81].
[13] *Motor Machinists* at [81].
[14] Statement of evidence of Grant Eccles on Science JWS dated 12 July 2019 at [6.1] – [6.7].

changes proposed in the submission have been denied an opportunity in the plan change process to respond to those additional changes.[15]

28. The Public Notice dated 22 October 2016 states that the purpose of PC1 is to protect and restore water quality by managing land use and discharges of nitrogen, phospohorus, sediment and bacteria to land where it may enter the surface water or ground water within the Waikato and Waipā River catchments. This is the notice that those persons directly affected would have received.

29. Accordingly those who may wish to participate were notified that PC1's changes to the operative regional plan are restricted by location (Waipa and Waikato River catchment) and to the management of the discharges of four contaminants (nitrogen, phosphorous, sediment and microbial pathogens).

30. Any person directly affected or potentially directly affected by the additional attribute changes and changes to Table 3.11.1 (proposed by some parties to the science JWS) that is not directly linked to the four contaminants would not have received any formal notification of these possible changes.

31. I submit that those potentially directly affected are wide ranging. Table 3.11.1 contains the numeric targets for Objectives 1 and 3. These objectives will likely be considered when deciding whether to grant (or the conditions to impose) on certain consents granted under PC1. It follows that Table 3.11.1 may affect resource consent applications. Any change to Table 3.11.1, so that it includes new concentrations of attributes for particular sub catchments and extending TN and TP targets to tributaries, will directly affect those in the sub catchment and tributaries especially if the FEP is directly linked to the Table (as proposed in the evidence of some submitters, such as Mr Marr's evidence for Fish & Game).

32. The second limb of the *Clearwater* test also requires that those persons *potential* directly affected be considered. In the science JWS hearing, Mr Conland said that including loads in the Table is useful as loads are easier to implement than concentrations. This does not consider the people potentially

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[15] *Motor Machinists* at [82].

affected by such a change. In my submission, a lot of people will potentially be directly affected by changes to Table 3.11.1 if the loads and new attributes are used to effectively allocate the leaching of contaminants, now or in future, or any other use of the table.

33. Similar to the outcome in *Motor Machinists,* I submit that this leaves a real concern that persons affected or potentially affected by the additional changes have had no opportunity to be heard on this potentially significant change.

Evaluation

34. I submit that we can group proposed changes to Table 3.11.1 as follows:

    a. Changes not directly related to discharges of the four contaminants. These amendments are clearly not within the ambit of PC1 and will not comply with the first limb of the *Clearwater* test. I understand that new attributes for Fish, Temperature, Toxicants and Riparian Cover may fall into this category.

    b. Changes to the Table that is incidental or consequential. This is where the condition for *Motor Machinists*[16] is relevant. It requires that incidental or consequential changes may be on the plan "if no substantial further s32 analysis to inform affected persons of the merits are required".

       The potential allocation of loads, limits or concentrations to particular sub catchments and extending TN and TP targets to the tributaries will directly affect those in the sub catchments and tributaries. I submit that a further s32 analysis would be required of the associated benefits, risk and costs to inform affected and potentially affected persons of the merits of the proposed changes. Accordingly these incidental or consequential changes will not comply with the first limb either as they fall foul of the condition described in *Motor Machinists*.

       I submit that if the changes do not meet the test contained in the first limb then they do not comply with the second limb. Loads have the potential to

[16] *Motor Machinists* at [81]

be used to control or allocate discharges at or to a property level and there is a real concern that persons affected or potentially affected by these proposed changes have not had an opportunity to be heard.

c. Changes to the Table to introduce new attributes that directly respond to and have a cause and effect relationship with any of the four contaminants. I understand that these are potentially macroinvertebrates (MCI or QMCI), periphyton, deposited sediment and dissolved oxygen. These are the only changes that could potentially meet the first limb of the *Clearwater* test if the Hearing Panel finds that there is sufficient evidence to establish a cause and effect relationship between these and the four contaminants. However, even if such a finding was made, such changes to the Table would also need to comply with the second limb of the *Clearwater* test. In my submission, such changes would fail this test because there is a real concern that persons affected or potentially affected by the additional changes have not had the opportunity to be heard.

   In the event the Hearing Panel disagrees, if these additional attributes have a cause and effect relationship with the four contaminants and are held to be 'on the plan' that is not the end as these attributes will still need to be assessed on their merits. The analysis by Mr Eccles at [6.1] – [6.6] explains why the TLG did not consider these attributes appropriate on the merits.

35. For all of these reasons, my submission is that the Hearing Panel does not have scope or a reasonable basis upon which to amend Table 3.11 beyond changes that are purely in the nature of tidying up or clarification of existing attribute states.

Precautionary approach

36. Objective f of the Vision & Strategy has an objective is to adopt a precautionary approach towards decisions that may result in significant adverse effects on the Waikato River and, in particular, those effects that threaten serious or irreversible damage to the Waikato River. This raises the legal issue of the extent to which the Hearing Panel is required to adopt a precautionary approach, or additional precaution over and above that required under the RMA, when considering the provisions of PC1.

37. A precautionary approach may[17] be appropriate to address the risk of future serious or irreversible harm which is not predictable or expected because of the uncertainty or absence of information at the time by applying precaution to the ultimate judgment. A precautionary approach should only be adopted:

a. in the face of scientific uncertainty or lack of information about the scope or nature of the relevant environment harm of an activity. There needs to be a plausible basis not just a suspicion or innuendo, for adopting the precautionary approach.[18]

b. and when there is a need to prevent serious or irreversible harm due to the potential effects of that activity.[19]

38. Those factors do not apply to PC1.

Scientific uncertainty about the effects

39. A precautionary approach may be appropriate where there is scientific uncertainty or ignorance about the nature or scope of environmental harm, such as doubt about how effects arise, what creates them and what might cause them.[20]

40. The water quality in the Waikato and Waipa Rivers is not unknown. There has been comprehensive analysis done on the current state and trend of these rivers. The impact of farming is relatively well understood, hence Plan Change 1 and its controls focus on the discharge of the four contaminants. It is not a situation where we do not know how the effects arise, what creates them and what might cause them. The area of scientific uncertainty or lack of knowledge appears not to be so much as to whether a potential affect may occur rather it is uncertainty about each farm's contributions, flow paths and attenuation and how to measure P, sediment and E coli from a property level.

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[17] It remains a discretion to apply the precautionary approach even if the factors to adopt it are met. See *Sea-Tow Ltd v Auckland Regional Council* EnvC Auckland A066/06, 30 May 2006 at [462(a)] and [463].
[18] *Environment Defence Society v King Salmon* [2013] NZHC 1992 at [73]; *Sea-Tow Ltd v Auckland Regional Council* EnvC Auckland A066/06, 30 May 2006 at [462(d)].
[19] *Warren v Tasman District Council* NZEnvC Wellington W008/98 4 ELRN 170 at 42.
[20] *Sea-Tow Ltd v Auckland Regional Council* EnvC Auckland A066/06, 30 May 2006 at [464].

Need to prevent serious or irreversible harm to the environment

41. Farming in Waikato and Waipa Rivers catchment is not a new activity but has been lawfully undertaken for a considerable period of time. In my submission, there is no evidence that serious or irreversible harm to the environment will occur if it continues.

42. In these circumstances adopting caution or conservatism in developing PC1, over and above those cautions provided for in the RMA, is not appropriate.

Certified Industry Scheme

43. In light of evidence from industry groups, that they will not provide a CIS if it is not a permitted activity, an issue arises as to whether a FEP can be prepared under a CIS as a permitted activity. FFNZ's position is that such a regime can be provided for under Schedule 1 (as amended by the s42A report and by Mr Eccles). However, in the event that the Hearing Panel disagrees, FFNZ proposes that Schedule 1 can be amended to appropriately reduce the use of judgments in FEPs (as proposed in Schedule 1A attached to Mr Eccles' evidence). [21]

44. My legal submissions on Topic 2 set out a number of legal principles that are relevant to the consideration of a permitted activity status. I submit that a lawful permitted activity status can be designed for PC1. These legal submissions take the next step and evaluate the two principles raised by submitters opposed to a permitted activity status.

45. The two principles are:

    a. Certainty: The leading case on certainty has held that it is not an evaluation helped by looking at whether or not there is a discretion or value judgment.[22] The question reduces to one of degree: is the subject description too wide or too vague to have "some measure of certainty"?[23]

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[21]Statement of evidence of Grant Eccles on Topic 3 dated 5 July 2019 2019 at Annexure GE1, GE2 and GE3.

[22] *A R & M C McLeod Holdings Ltd v Countdown Properties Ltd* (1990) 14 NZTPA 362, 372-3

[23] *A R & M C McLeod Holdings Ltd v Countdown Properties Ltd* (1990) 14 NZTPA 362, 372-3

That is not an inquiry assisted by imported reference to "discretion" and "value judgments".[24]

b. Delegation: A consent authority entrusted with *judicial* decision duties cannot delegate the performance of such duties unless authorised by the RMA or statute. This principle does not bar delegation of decision making altogether. The principle holds that an *adjudication* or *judicial decision* delegated by the Council is not allowed. Requiring a professional by reference to their own skill and experience to confirm that standards set are met does not purport to confer an arbitral status. [25]

First principle: certainty

46. In respect of certainty, no apparent issue arises with the proposed text of Rule 3.11.5.3. The performance standards/conditions are factual questions with either a 'yes' or 'no' answer.

47. The issue of certainty arises in respect of the requirement that FEPs must be prepared in accordance with Schedule 1. Schedule 1, as amended by the s42A report, is designed with key parameters - good farming practice for the management of diffuse discharge of N, P, sediment and microbial pathogens as set out in the objectives and principles in Part C - as well as a clear process for the assessment against these parameters.

48. If the evaluation of whether Schedule 1 is sufficiently certain does not look at whether or not there is a discretion or value judgment but rather whether the description is too wide or too vague then it is submitted the process in Schedule 1 is clear, what is required to be assessed is clear and the parameters are clear.

49. It is submitted that the assessment by the CFEP in Schedule 1 is not too wide so as to lead to uncertainty. The assessment by the CFEP against the objectives and principles will be an objective approach in which he/she objectively apply his/her knowledge to assess whether the standards are met.

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[24] *A R & M C McLeod Holdings Ltd v Countdown Properties Ltd* (1990) 14 NZTPA 362, 372-3

[25] *Turner v Allison* [1971] NZLR 833 (CA) at 857 at line 1-5.

It is an assessment of whether a reasonable CFEP (with the knowledge and expertise as required) considers:

a. The farming practices meet the good farming practice as specified in Part C.

b. The identified time bound actions and practices will meet the good farming practice specified in Part C.

c. In a review, whether the farm enterprise has undertaken the actions and practices specified in the FEP.

50. The tests is a reasonable CFEP bringing an objective assessment using consideration of science and facts to bear. This assessment can be compared favourably with the assessment in *Watercare v Minhinnick*.[26]

51. The Court of Appeal in *Watercare v Minhinnick*[27] held that "it is clear the assessment whether something is noxious, dangerous, offensive or objectionable is an objective one". Just because it depends on an opinion does not make the standards subjective. The Court of Appeal continued that weighing all relevant competing considerations and ultimately making a value judgment does not mean the standard is subjective.[28]

52. In light of the above it is submitted that Schedule 1 is sufficiently certain.

53. However, in the event that the Hearing Panel disagrees, Mr Eccles and Mr Millner have drafted Schedule 1A. It is submitted that it is not possible to remove all value judgments from Schedule 1. However, it is possible to greatly narrow these.

Delegation

54. In respect of the issue of delegation of judicial decision making, the role of the CFEP is to certify compliance with Schedule 1, not to approve the contents of

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[26] *Watercare v Minhinnick* (1997) 3 ELRNZ 511; [1998] 1 NZLR 294; [1998] NZRMA 113; (CA)
[27] *Watercare v Minhinnick* (1997) 3 ELRNZ 511; [1998] 1 NZLR 294; [1998] NZRMA 113;(CA) at 524 at line 15
[28] At 525 line 16

FEPs. It is acknowledged that the role of the CFEP as certifier could still conceal that the real nature of the assessment by the CFEP is a judicial one. However on examining the content of Schedule 1 (as amended by the s42A report and Mr Eccles), I submit that this is not the case. What is required from a CFEP is not a judicial decision but a certification by a professional.

Merits

55. The real issue appears to be the tension between the planning preference for non complex permitted activity rules and the benefits of providing for Certified Sector Scheme in a permitted activity.

56. Many permitted activity rules are simply a matter of routinely applying well understood standard formulae. As a general rule, the more complex or technical the expert analysis required to assess whether an activity complies with a permitted activity standard, the less attractive a permitted activity status becomes. In my submission, this ought to be carefully considered and weighed against the benefits that a Certified Sector Scheme will provide.

57. In FFNZ's Block 2 evidence the risk of regulatory failure is discussed and the benefits of the CIS in reducing the number of consents for Council to process and thereby reducing the risk of regulatory failure. In his Block 3 evidence, Mr Millner discusses the benefits of FEPs prepared under a CIS that will not be achieved in other FEPs.[29] This includes from the industry (ability to terminate supply for non compliance with FEP), farmer (option to deal with their industry body) and Council (reducing consents, standardisation and consistency, and monitoring or reporting) perspectives. He also raises the significant benefit of the CIS providing a strong incentive for banks to make sure their farmers are compliant. As Dr le Miere can explain, this has been FFNZ's experience in Horizons and Canterbury.

58. These benefits are at no cost to Council.

[29] Statement of Evidence of Ian Francis Millner dated 5 July 2019 at [3.60] – [3.64]

59. It is submitted that the various benefits of the CIS ought to weigh heavily in the decision about whether to provide for FEPs prepared under it as a permitted activity status.

Presentation

60. FFNZ intends to present its position on Topic 3 of PC1 as follows:

    a. Mr Meier will present the legal submissions;

    b. Dr le Miere will present his evidence;

    c. With the Panel's permission, Mr Millner and Mr Eccles intend to jointly present their evidence.

MJ Meier