

**BEFORE THE HEARINGS PANEL APPOINTED BY
WAIKATO REGIONAL COUNCIL**

AND IN THE MATTER of Proposed Change 1 to the
Waikato Regional Plan

BETWEEN Royal Forest and Bird Protection
Society of New Zealand Inc

Submitter

AND Waikato Regional Council

Consent Authority

SUBMISSIONS OF COUNSEL FOR

THE ROYAL FOREST AND BIRD PROTECTION SOCIETY OF NEW ZEALAND INC

26 April 2019

Royal Forest and Bird Protection Society of New Zealand Inc
PO Box 2516
Christchurch
Email: p.anderson@forestandbird.org.nz
Tel: 021 2866992
Solicitor acting: Peter Anderson

MAY IT PLEASE THE COMMISSIONERS

1. PC1 is called the healthy rivers plan change. It is vitally important as it sets the foundation for water quality management for decades for one of New Zealand's best known rivers.
2. Forest & Bird is critical of the healthy rivers plan change. The main criticism is that it sets what it says is an ambitious target, but delays it far into the future and provides limited or no detail on how it is to be achieved.
3. This approach has been justifiably criticised as relying on the "miracles occur here" approach to planning. In a similar vein we would say that it is the Hail Mary plan change, where achievement or otherwise is left to chance, with success very unlikely to be achieved.
4. These submissions address the following matters:
 - a. hearing block approach;
 - b. the collaborative stakeholder group (CSG) process;
 - c. scope;
 - d. overall direction, including a comparison with plans in Canterbury that deal with similar issues;
 - e. water quality and ecosystems; and
 - f. the wording of the provisions.

HEARING BLOCKS

5. Forest & Bird's submission includes matters relevant to all three hearing blocks. In terms of the topics set out for Block 1 and the matters discussed in the Part A and B s42A Report, Forest and Bird's submission:
 - a. identifies key issues with timeframes and measures;
 - b. addresses the approach to freshwater objectives generally; and
 - c. seeks specific relief on the relevant provisions.
6. There appears to be some overlap in the matters relevant to topics for Block 1 and later block topics, particularly the relationship between the timeframes, targets and measures, such as the 75th percentile, and good management practise.
7. What this means in practise is that, in order to understand submissions made on Block 1 reference is needed to provisions that are the subject of later blocks.

COLLABORATIVE STAKEHOLDER GROUP PROCESS

8. The s42A report contains a discussion on Collaborative Stakeholder Group (CSG). A Forest & Bird employee participated in the process.
9. Forest & Bird had a number of concerns about the CSG process, in particular regarding the make-up of the group and the decision making process. As is typical of these processes, the group contained many more industry representatives than environmental ones. In addition, the decision making process was effectively majority rules:¹

The group sometimes may decide to proceed with the proposal even though there are disagreements. In this case there would need to be a clear record of the identity of those disagreeing, their concerns and the reasons for these concerns. The Chairperson will have a key role in judging when to proceed.

10. Due to the concerns about the process Forest & Bird contemplated pulling out of the process but remained involved. The ongoing participation was on the basis that there would be a First Schedule process on which it would be free to submit.
11. There is nothing to suggest that parties to the CSG are bound by the outcomes of the CSG. If there was Forest & Bird would not have participated.
12. A further problem with relying on the CSG is that some of the assumptions that the CSG made are no longer valid. A key part of the staging recommended by the CSG was there was significant load to come from nitrogen.

The CSG has expressed the first stage as 10% of the journey towards achieving the Vision and Strategy for the Waikato River/Te Ture Whaimana o Te Awa o Waikato in the first 10 years; the second stage is 25% in 20 years, and so on. This includes an understanding that the effect of some contaminants (particularly nitrogen) discharged from land has not yet been seen in the water. This is often called "load to come" and means that more effort is required over time to move to the desired water quality.

13. This is contrary to Mr Williamson's evidence:

The groundwater N "load to come" concept, defined in the PC1 background documents as a load of N in groundwater derived from land surface recharge that will take many decades to discharge into the receiving environment, is contrary to the principles of groundwater redox chemistry.

14. The CSG findings should be given limited weight. Plans should be made on the basis of currently available information, not flawed processes that are years out of date.

SCOPE

15. Forest & Bird's submission sought the inclusion of additional attributes in Table 3.11-1.

¹ Terms of reference, page 18
(<https://www.waikatoregion.govt.nz/assets/PageFiles/28126/CSG%20Terms%20of%20Reference.pdf>)

16. The s 42A report suggests that the scope of the Plan Change is limited to the four contaminants referred to in the notified version.²

The attributes contained in Table 3.11 are directly relevant to the four contaminants managed by PC1, the inclusion of DO would introduce an attribute target that sits outside the scope of the plan change and the activities managed in the methods and rules.³

Temperature, pH and toxic heavy metals are also outside the scope of PC1 as the provisions only seek to manage the discharge of nutrients (N and P), *E. coli* and sediment. As such, the Officers recommend Table 3.11-1 is not amended to include these attributes.⁴

17. No analysis is undertaken to justify these statements and Forest & Bird disagrees that the scope of PC1 is limited to nitrogen, phosphorous, *E.coli* and sediment.
18. Put simply, PC1 is a plan change about the management water quality in the Waikato and Waipa Rivers. Submissions addressing water quality management are within scope.
19. PC1 as notified had the following objective:

Long-term restoration and protection of water quality for each sub-catchment and Freshwater Management Unit/Te Whāinga 1: Te whakaoranga tauroa me te tiakanga tauroa o te kounga wai ki ia riu kōawaawa me te Wae Whakahaere i te Wai Māori

20. The notified version, on which scope is determined, did not limit consideration to any particular contaminants.
21. Perhaps with scope in mind, the s 42A report recommends the broad objective is replaced with a narrow one:

By 2096 at the latest, a reduction in the discharges of nitrogen, phosphorus, sediment and microbial pathogens to land and water results in achievement of the restoration and protection of the Waikato and Waipā Rivers, such that of the 80-year water quality attribute targets states in Table 3.11-1 are met.

22. Either way, a critical element of PC1 is managing contaminants is to achieve the limits and targets in Section 3.11.1.
23. It must be possible to make a submission on such a plan change saying that the link between the contaminants and the outcomes sought is flawed. If it was not possible to make such a submission and the notified plan did not properly link contaminants to targets and outcomes, the risk would be that the plan would not be able to deliver what it had intended. This is contrary to the public process of plan development.
24. Ms McArthur considers that water quality cannot be addressed without considering contaminants other than the four:

² Nitrogen, phosphorous, *E.coli* and sediment

³ 534

⁴ 622

25. Management of the contaminants specified in the Vision and Strategy approach (nutrients, faecals and sediment) has not been appropriately carried through into PC1 for the majority of waterways, including the whole Waipā catchment and all tributaries of the Waikato. It is difficult to imagine how management without addressing trophic state, dissolved oxygen, deposited sediment, dissolved nutrients or biological attributes, limits or targets in these waterways will make a positive contribution to water quality in the Waikato River or at the local level within the Waipā catchment and Waikato tributaries. This is particularly relevant when patterns of fish diversity are taken into account.

25. Thus, based on Ms McArthur's evidence, if the scope is limited to the four contaminants, PC1 will fail.

26. Problems with the approach can also be seen when it comes to implementing the NPSFM:

In a more general sense, Officers consider that there potentially are matters of misalignment between the NPSFM and PC1, particularly in terms of values and uses for each FMU identification of freshwater objectives, and appropriate attributes. These potential misalignment issues may need further exploration through the hearing process.

27. If these matters of "misalignment" related to discharge of contaminants other than the four the officers say are within scope, the approach adopted by the s 42A report would prevent the misalignment being addressed.

OVERALL DIRECTION

28. Forest & Bird original submission was that setting an 80 year timeframe with a 10% change over the first 10 years was inadequate and a more ambitious timeframe and short term gains were needed. Forest & Bird also submitted that the list of attributes was incomplete and did not provide for ecological health. These submissions were allied with a criticism of the approach to reducing losses only from the 75th percentile, or worst 25% of dairy farmers.⁵

80 year targets and trajectory of improvements

29. Forest & Bird's submission was critical of the 80 year timeframe for achieving water quality outcomes. This submission is maintained, not least because of the evidence about "load to come", which is discussed below.

30. In terms of the trajectory The s42A report refers to the CSG as provide for a "more or less straight –line improvement path". The relevant part of the CSG report said:

The CSG has expressed the first stage as 10% of the journey towards achieving the Vision and Strategy for the Waikato River/Te Ture Whaimana o Te Awa o Waikato in the first 10 years; the second stage is 25% in 20 years, and so on. This includes an understanding that the effect of some contaminants (particularly nitrogen) discharged from land has not yet been seen in

⁵ This is to be addressed in Blocks

the water. This is often called “load to come” and means that more effort is required over time to move to the desired water quality.

31. Clarity is not provided by the subsequent parts of the report which refer to reductions:

14.3 Staged approach

To recognise the scale of the effort needed to make enough change on the land to restore Waikato and Waipa Rivers water quality, the CSG has decided to take a staged approach. This means that successive regional plans from 2016 onwards will require changes on the land to reduce discharges of nitrogen, phosphorus, sediment and bacteria.

32. Further detail was provided in Figure 6:

10%	... of way towards improving water quality to achieve the Vision and Strategy	10 years
25%		20 years
50%		60 years
100%		80 years

33. The difficulty that arises is that the s 42A report said officers considered the CSG straight line approach towards achieving the objectives was appropriate. However, given that this is not what the CSG recommended.

34. Aside from some sweeping statements, the s 42A report provides no further analysis than that undertaken by the CSG, but rather adopts their interpretation of what the CSG said.

35. Forest & Bird does not accept the straight line approach is appropriate, certainly not the “straight line” that was proposed by the CSG. In order to understand this submission, other aspects of the CSG approach and Forest & Bird submission need to be considered.

36. In order to achieve the 10% reduction in the first 10 years. The CSG proposed an approach that focussed on the highest emitters and proposed that they be required to reduce losses:

The CSG wishes to see nitrogen reductions from landowners in each sector who are currently leaching very high amounts of nitrogen. The direction is for the highest nitrogen emitters to reduce (75th percentile on per sector basis, drystock sector will need to benchmark before this can be determined); those below the 75th percentile make some reductions that represent good management practices relating to the risk factors on their property.

37. This approach is confirmed later:

15.3 Policy on benchmarking nitrogen for accounting purposes and to identify highest emitters for reductions now. The policy intent is that individual properties must go through a process to find out how much nitrogen they are currently leaching from their property (called nitrogen benchmarking). The policy intent is twofold: 1. Establish a record of current practices and property-level discharges that can be used to relate to subcatchment loads (freshwater accounting) that can help derive an appropriate subcatchment or FMU allocation. 2. Ensure properties that are operating above the 75th percentile make reductions in discharges of nitrogen.

38. An important part of the CSG recommendation was that load to come is a significant issues. However, Mr Williamson's evidence is that load to come is unlikely in New Zealand:

5 In my opinion, the potential nitrate "load to come" concept due to the decadal or longer lag effect is unlikely in a New Zealand context where our catchments are small (on an international scale) and regularly dissected by dendritic drainages. This is because, in the case of:

5.1 Long groundwater flow paths (decades or longer) - nitrate will be attenuated through denitrification; and

5.2 Short groundwater flow paths - the nitrate load is oxic and stable and will be discharged relatively quickly and therefore any increases in concentration will be observed in the surface water flow record within months to years of the land use change (not multi-decades or longer).

39. This shakes the foundations of PC1, which is that we don't have to do anything urgently because it won't make any difference in the short term as it will be drowned out by the load to come. If the "load to come" is measured in months or years not decades the appropriateness of the 80 year time frame, which anticipated decades, also comes into question.

40. The effect of this is that short term objectives become more important. Mr Williamson considered that the short term improvements have a greater likelihood of success.

10 The consequences of adopting a more dynamic landscape-based set of provisions are that:

10.1 Short-term improvements (2016-2026) in freshwater quality will have a greater likelihood of success; and

10.2 The longer-term (80-year) improvements component of PC1, while important from the perspective of the Vision and Strategy would (as a result) become less important from a water quality perspective.

41. This can be contrasted to PC1's approach to the 2016-2026 timeframe, which is effectively, do nothing except target the 75th percentile or worst 25% of dairy farms.⁶
42. Even before the "load to come" was questioned, the CSG proposal was badly flawed. Targeting the 75th percentile worst percentage of dischargers:
 - a. is inherently unfair as the 75th percentile farmer has to take some steps to reduce nitrogen loss, but the 74th percentile farmer, along with everyone else, has to do nothing; and
 - b. will lead to a focus on staying outside the 75th percentile.
43. Putting equivalent requirements on high emitting sectors like dairy as low emitters like dryland farming or forestry might appear equitable but is unfair as low emitters:
 - a. are causing a relatively small part of the problem; and
 - b. low emitters often have very limited opportunities to reduce losses.
44. Forest & Bird is not aware of any other Council adopting this kind of approach to managing nitrogen losses.
45. The reason this is important is that the outcome sought (10% of the journey) must somehow be related to the mechanism to achieve it (reductions in the 75th percentile of dairy farmers). It is not clear how these two interacted in the CSG's recommendation. Did targeting the worst 25% of dairy farmers inform the 10% in the first 10 years? Or did the CSG decide on 10% and then look at the simplest way of achieving it?
46. Forest & Bird's position is that the current approach is fundamentally flawed in that it focuses on the 75th percentile dairy farmers. The s 42A report acknowledges opposition to the 75th percentile but does not signal any recommendations. Other recommendations signal that the officers do not support the approach of targeting the 75th percentile dairy farmers.
47. The appropriate approach is to identify the objectives, the time frame and trajectory and the mitigation methods that are required to achieve the objectives in the times provided. This would include short, medium and long term targets.
48. All would be reviewed when the plan was reviewed every 10 years.
49. The section 42A report refers to a number of submissions that are critical of the aspects of PC1 but often recommends no change on the basis that there is no better suggestion. It is not the job of submitters to devise a plan change that complies with legal requirements. It is the job of the Council and PC1 falls short of what is required.

⁶ This occurs through the definition of 75th percentile nitrogen leaching value: The 75th percentile value (units of kg N/ha/year) of all of the Nitrogen Reference Point values for dairy farming properties and enterprises within each Freshwater Management Unit^A and which are received by the Waikato Regional Council by 31 March 2019.

50. Forest & Bird's position is developed later but is effectively that a pause is required while key issues, notably timeframes and medium term targets are revisited,

Medium term targets

51. The s 42A report does not recommend setting any mid-term targets due to the possibility of technological changes:⁷

While it is understood that the community seeks certainty about potential restrictions, it is clear that significant changes in farming practices will be required over the next years to achieve the long term goals (set in Objective 1). As outlined in Part A of this report PC1 and supporting documents, there is insufficient information to determine the most appropriate pathway to achieve the longterm targets. Given the likely changes in technology over the next decade and taking into account the short life of PC1 (10 years), the Officers do not consider it appropriate to specify interim targets. In addition, the Officers do not recommend adopting submissions that request a longer timeframe for achieving the 80 year targets. The 80 year timeframe to achieve water quality targets settled on by the CSG is intergenerational. The information supporting the development of PC1 indicates that the full achievement of the Vision and Strategy by 2096 is likely to be costly and difficult, however extending this timeframe will unlikely further reduce the difficulty or cost of meeting the targets. It is not recommended that these submissions are adopted.

52. There is an obvious logical fallacy in saying that there is enough information to say that the 80 year time frame and "straight line" trajectory are appropriate but that changes in technology over the next 10 years mean that interim targets cannot be set.
53. The problem with this approach is that it relies on technology. If the technology is not developed, the objectives will not be met. This is not appropriate. The objectives lead the changes in technology. The changes in technology do not determine the objectives.
54. A number of witnesses, notably Ms Marr, Ms Kissick and Ms MacArthur, support the imposition of medium term targets. Medium term targets need to be considered in the context of the planning process, which can take a long time. Ms Marr addressed this in her evidence:

121. I disagree with the s42A report on this matter. Plans typically have a life longer than 10 years. A review of the plan is required within 10 years of it becoming operative. Assuming PC1 takes a further 2 years to go through the decisions and Environment Court appeals process, PC1 will not be operative until 2021. A review would not be required until 2031. If that review resulted in recommendations for changes, a plan change process might take 3 to 7 years to become operative. This means the current plan framework may be in place until 2034 or 2037. In these circumstances it is prudent for PC1 to take a longer term view, so that the plan provides guidance for activities for its entire life – which could be much longer than 2026.

55. If anything Ms Marr's timeframes are too short, as it implies that decisions will be released this year and Environment Court appeal will only take two years. It seems unlikely that that Environment Court appeals would be resolved by 2021.

⁷ 309

56. Ms Marr recommends 20 years goals.

57. Ms Kissick makes similar comments:⁸

No short-term targets have been set for water quality improvement. Instead the Plan Change requires unspecified 'actions' are put in place to work toward reductions in the discharge of contaminants. The Plan Change then sets water quality targets for an 80-year timeframe which the officers have stated will rely on technologies or practices that are not yet available or economically feasible to be achieved.

58. Ms Kissick recommends that a medium term targets are included, suggesting 20% in 20 years:⁹

As a result, I recommend that additional interim targets for rivers and wetlands, such as the 20% improvement in water quality in 20 years as suggested in the Director-General's submission, is a useful target to implement through this Plan Change to ensure that progress on improving water quality is focussed. I also recommend the inclusion of short-term targets which seek to improve water quality in lakes by 20% of the 80-year target by 2030.

59. Forest & Bird supports the call for medium term targets. PC1 is destined to fail if it only :

- a. sets an "ambitious" long term target; and
- b. short term objective of implementing the actions to achieve a 10% in water quality by 2026 , without specifying what these actions are -

but nothing in between.

60. There will be many years, between the short term target in 2026 and whenever a new plan is advanced. The effect of this is that the plan will have no objectives other than the 80 year objectives.

61. This is the basis of the criticism that PC1 is a Hail Mary plan change or as Ms McArthur put it we need to rely on the "miracles happen here" approach to planning.¹⁰ An objective is set but no mechanisms are provided to achieve it.

62. The effect of this is that resource consents will be issued in a vacuum. Consent conditions may be able to provide for the 10% reduction. However, this seems unlikely, as there is no detail about how the 10% reduction is to be achieved. However, as the plan provides no guidance on what is to occur after this, consents will not be able to provide for anything beyond 2026.

63. Before undertaking a detailed analysis an alternative approach has been adopted in Canterbury which, while far from perfect, is worth considering.

A comparison to the Canterbury Land and Water Regional Plan

⁸ 27

⁹ 287

¹⁰ 109

64. Plan Changes to the Canterbury Land and Water Plan (CWLP) have addressed similar situations. PC1 inserted a new Chapter 15 related to the Selwyn te Waihora FMU and addressed a similar problem of a serious overallocation and raised similar matters such as load to come and the length of time required to achieve ecosystem health. PC7 is currently at the stage of pre-notification consultation.
65. However, a dramatically different approach was taken. Chapter 15 identified different types of land use and provided for a staggered approach to reducing nutrient losses. Low level emitters were permitted provided they were farming in accordance with good management practices. The relevant policy provided:
- 11.4.13 Reduce discharges of nitrogen, phosphorus, sediment and microbial contaminants from farming activities in the catchment by requiring farming activities to:
- (a) Not exceed the nitrogen baseline where a property's nitrogen loss calculation is more than 15 kg of nitrogen per hectare per annum, unless Policy 11.4.14 applies; and
 - (b) Implement the good management practices set out in Schedule 24; and
 - (c) Implement a Farm Environment Plan prepared in accordance with Schedule 7 Part A, by 1 July 2017, if a property is greater than 10 hectares and is within the Lake Area in the Cultural Landscape/Values Management Area; and
 - (d) Exclude stock from drains, in addition to the regional requirements to exclude stock from lakes, rivers and wetlands.
66. All other emitters were required to reduce their losses over time through a number of stages. The first stage was to implement good management practices. The relevant policy provides:
- 11.4.15 By 1 January 2017, further reduce discharges of nitrogen, phosphorus, sediment and microbial contaminants from farming activities in the catchment by requiring farming activities to:
- (a) Implement a Farm Environment Plan, prepared in accordance with Schedule 7 Part A, where the nitrogen loss calculation for the property is greater than 15 kg per hectare per annum or the property is situated partly or wholly within a Phosphorus Sediment Risk Area as shown on the planning maps; and
 - (b) Where a property's nitrogen loss calculation is greater than 15 kg of nitrogen per hectare per annum, achieve a rate of nitrogen and phosphorus loss that is consistent with good management practice for the property's baseline land use taking into account:
 - (i) The type of farming activity; and
 - (ii) The drainage characteristics of the soil; and
 - (iii) The climatic conditions and topography of the property; and
 - (iv) The type of irrigation system used (if any); and
 - (v) Whether the practices set out in Schedule 24 have been fully adopted; and

- (vi) The nitrogen baseline for the property and the level of any enduring reductions in nitrogen loss already achieved relative to that baseline.

67. The second stage was percentage reductions beyond good management practice:

11.4.16 1. Assist with achieving the water quality limits in Section 11.7.3, being a 14% reduction in nitrogen losses across the catchment beyond those that could be reasonably anticipated by adopting good management practices, by 1 January 2022 by requiring farming activities (including farming activities within irrigation schemes) to:

- (a) Implement a Farm Environment Plan prepared in accordance with Schedule 7 Part A, where a property is greater than 10 hectares; and
- (b) Where a property's nitrogen loss calculation is greater than 15 kg of nitrogen per hectare per annum, further reduce losses of nitrogen from farming activities by implementing management practices that are in the order of half-way between good management practice and maximum feasible mitigation, which means the required reduction in the losses of nitrogen from the property or farming enterprise are:
 - (i) 30% for dairy; or
 - (ii) 22% for dairy support; or
 - (iii) 20% for pigs; or
 - (iv) 5% for irrigated sheep, beef or deer; or
 - (v) 2% for dryland sheep and beef; or
 - (vi) 7% for arable; or
 - (vii) 5% for fruit, viticulture or vegetables; or
 - (viii) 0% for any other land use.

2 If the nitrogen loss rate reductions required in Policy 11.4.16(1)(b) are unable to be achieved by 1 January 2022, any extension of time to achieve the reductions will be considered having regard to:

- (a) The nitrogen baseline and the level of any enduring nitrogen loss rate reduction already achieved from that baseline; and
- (b) The implications on achieving the catchment nitrogen load target in Table 11(i) by 2037; and
- (c) The capital and operational costs of making nitrogen loss rate reductions and the benefit (in terms of maintaining a farming activity's financial viability) of spreading that investment over time; and
- (d) The nature, sequencing, measurability and enforceability of any steps proposed to achieve the nitrogen loss rate reductions.

68. The third stage was a restriction maximum losses:

11.4.18 Despite Policies 11.4.7 to 11.4.9, 11.4.11, 11.4.16 and 11.4.17, restricting farming activities and farming enterprises so that from 1 January 2037 their nitrogen loss calculations are not more than 80 kg of nitrogen per hectare per annum.

69. In a similar vein, Environment Canterbury has also recently circulated a pre-notification draft for PC7, which in clues part of the Waimakairiri catchment. This sets out proposed

reductions in nitrogen for different land uses (dairy and other) and proposed reductions that will be required.¹¹

Stages of reduction per sub area*

Nitrate Priority Area Sub-area (see planning maps)	Farming land use activity	Cumulative percentage reductions in nitrogen loss below the Baseline GMP Loss Rate or other lawfully consented rates(kg nitrogen per hectare per year) and dates by which these are to be achieved					
		By 1 January 2030	By 1 January 2040	By 1 January 2050	By 1 January 2060	By 1 January 2070	By 1 January 2080
Sub-area A	Dairy	15%	30%	45%	-	-	-
	Other	5%	10%	15%	-	-	-
Sub-area B	Dairy	15%	30%	45%	60%	-	-
	Other	5%	10%	15%	20%	-	-
Sub-area C	Dairy	15%	30%	45%	60%	75%	-
	Other	5%	10%	15%	20%	25%	-
Sub-area D	Dairy	15%	30%	45%	60%	75%	90%
	Other	5%	10%	15%	20%	25%	30%

*Further reductions will not be required if that would draw the required nitrate loss rate below a “floor”.

- 70. The approach adopted in Canterbury can be contrasted with PC1. The LWRP sets out the reductions that are required and places the onus on the landowner to determine how to reduce the nutrient losses to meet the required reductions. It may be that technological advances are need. It may be that land use change is needed to meet the targets.
- 71. This can be contrasted with PC1, where the officers do not recommend targets or required reductions, on the basis that they don't know what can be achieved because they don't know what technological advances will be made. This means that the achievement of objectives is reliant on technological advances. This approach is not appropriate.
- 72. The ECan approach is favoured as it provides certainty as to what is needed to achieve the plan objectives, as opposed to PC1, which provides no certainty.

WORDING OF PROVISIONS

- 73. There is a real difficulty in commenting on the proposed wording at this time.
 - a. This is partly caused by the fact that this hearing block does not include critical provisions where a significant shift in position has been signalled by the s 42A report writers.

¹¹ <https://ecan.govt.nz/your-region/plans-strategies-and-bylaws/canterbury-land-and-water-regional-plan/change-7>

- b. There is also a degree of caution required given this process is going to run for years. It is almost three years since the plan was notified and the planning process has made little progress. It will take more years before the plan change is operative. Much of the first 10 years will be taken up with the planning processes.

74. For this reason, the following encapsulates Forest & Bird’s views on the provisions that are the subject of Block 1 at the current point in time. This may change as more information comes to light.

75. Implicit in the section below is that there is currently inadequate information on which to make final decisions and further work is needed before any final decisions on the plan can be made.

3.11.1 Value and uses of the Waikato and Waipa Rivers

76. The values and uses in sections 3.11.1.1 and 3.11.1.2 of the plan provide the basis for the identification of attributes and freshwater objectives.

77. Forest & Bird supports DOC and the amendments proposed in Appendix 1 of Ms Kissick’s evidence, particularly with respect to “Ecosystem health” and “Natural form and character”.

78. Fish and Game have also submitted on these provisions and propose amendments in the evidence of Ms Marr. Forest & Bird’s further submission supports the submission of Fish and Game other than where the amendments seek outcomes for exotic species that are not to the benefit of indigenous species or enhancement of indigenous biodiversity.

79. The introduction of exotic fish species results in the decline of indigenous fish species diversity and abundance.

80. Ms Marr’s evidence recommends the inclusion of “values introduced species” and “trout” as intrinsic values in “Ecosystem health” or the alternative of specific values for trout fishery and spawning.

81. This is not within the scope of the Fish & Game submission. The Fish and Game submission on this point does not mention valued introduced species, trout or salmon.

<p>3.11.1.1 Mana Atua/ Intrinsic Values The Health and Mauri of the Water; Ecosystem</p>	<p>Support with amendments</p>	<p>1. Ecosystem Health is a compulsory national value under the NPS-FM, and Fish and Game supports the value that the Waikato and Waipa catchments support resilient freshwater ecosystems and healthy freshwater populations of indigenous plants and animals.</p>	<p>Before the first bullet point add the following: fresh water standards are set to achieve ecosystem health</p>
---	--------------------------------	---	---

Health		<p>2. This is because the value as stated encompasses the health of an ecosystem as a whole as well as the constituent populations of flora and fauna.</p> <p>3. As drafted however, bullet point narrative is unclear. It is important the value as drafted reflects ecosystem health.</p>	
--------	--	---	--

OBJECTIVES

Objective 1

82. Objective 1 as proposed provided:

By 2096, discharges of nitrogen, phosphorus, sediment and microbial pathogens to land and water result in achievement of the restoration and protection of the 80-year water quality attribute[^] targets[^] in Table 3.11-1.

83. Forest & Bird's submission sought to amend Objective 1 to reduce the timeframe for achieving ecosystem health. The expert evidence suggests that some sub-catchments may be able to meet attribute limits sooner than others.

84. As noted earlier, a critical issue in relation to Objective 1 relates to load to come. Mr Williamson's evidence is compelling and, if accepted, it is clear that "load to come" is not issue the CSG thought it was. The inevitable conclusion is that the 80 year timeframe needs to be revisited.

85. There is no need to delay the achievement of the long term objectives of the plan (ecosystem health) if one of the key reasons for such a long timeframe (load to come) is a far less serious issue than the CSG thought it was. There is no justification for delaying the achievement of the objectives for 80 years on the grounds of "load to come" if there is limited load to come.

86. The extremely long timeframe for achieving ecosystem health cannot be justified.

87. Subject to this qualification, Forest & Bird support the DOC wording with changes to clarify it is an objective for water quality.

88. Forest & Bird considers that Objective 1 could read:

Water quality in the Waikato and Waipā catchments is restored and protected so that the [xx] year attribute limits/targets in Tables 3.11-1, 3.11-1a, 13.11-3 and 3.11-4 are achieved by [xx] at the latest.

89. With appropriate amendments to Table 3.11-1 this objective can be identified as a freshwater objective for the purposes of giving effect to the NPSFM.

Objective 2

90. Objective 2 as proposed provided:

Waikato and Waipa communities and their economy benefit from the restoration and protection of water quality in the Waikato River catchment, which enables the people and communities to continue to provide for their social, economic and cultural wellbeing

91. As proposed, this objective is ambiguous. It provides that communities benefit economically from the restoration and protection of water quality, so they can continue to provide for their wellbeing. There was a disconnect with the reasons which referred to minimising disruption associated with reducing contaminant losses.
92. Forest & Bird's submission sought to amend the objective to achieve the outcomes which were set out more clearly in the explanation. The s 42A report recommended a minor change to the objective and deleting all explanations.
93. DOC has proposed amended wording which Forest & Bird generally supports with a minor change to simplify wording. Objective 2 should be amended to read as follows:

Long-term restoration and protection of water quality in the Waikato and Waipā River catchments, from the reduction of discharges, contributes to enabling people and communities to provide for their social, economic and cultural wellbeing.

94. This objective needs to be read with other objectives that provide for restoration.

Objective 3

95. As notified Objective 3 provided

Actions put in place and implemented by 2026 to reduce discharges of nitrogen, phosphorus, sediment and microbial pathogens, are sufficient to achieve ten percent of the required change between current water quality and the 80-year water quality attribute^targets^ in Table 3.11-1. A ten percent change towards the long term water quality improvements is indicated by the short term water quality attribute^targets^ in Table 3.11-1

96. Forest & Bird opposed this objective on the grounds that it delayed implementation of any meaningful changes for at least 10 years. The submission sought amendments to Objective 3 to ensure immediate actions were put in place to reduce discharges of contaminants. This submission has to be read in the context of other parts of Forest & Bird's submission that PC1 did not identify what was required to achieve the 10% target, except reductions by the 75th percentile of dairy farmers.
97. The s 42A report recommends some changes but these do not change the meaning of the objective.

98. A critical failing of proposed Objective 3 is that success or otherwise cannot be measured. There is considerable uncertainty about what proposed actions are necessary to achieve the targets in 3.11.1.
99. This can be compared with water quality outcomes, where success in achieving a specified water quality outcomes is readily measured.
100. The amendment sought by DOC is consistent with Forest & Bird's submission, in addition it sets out short term limits/targets. For reasons set out above, Forest & Bird supports the inclusion of short and medium limits/targets to achieve ecosystem health.
101. To better address Forest & Bird's submission the wording suggested by DOC should also include a medium term limit/target. Objective 3 should be amended to read:
- Reduce diffuse and point source discharges to achieve the short-term and medium term water quality attribute limits/targets in Tables 3.11-1, 3.11.1a, 3.11-3 and 3.11-4 by 2030 and [xx].
102. The consideration of the medium term limits and targets will be influenced by consideration of the implications of the "load to come" issue.
103. We also consider that, with appropriate amendments to Table 3.11-1, this objective can be identified as a freshwater objective for the purposes of giving effect to the NPSFM.

Objective 4

104. Objective 4 as notified provided:

A staged approach to change enables people and communities to undertake adaptive management to continue to provide for their social, economic and cultural wellbeing in the short term while:

- a. considering the values and uses when taking action to achieve the attribute[^] targets[^] for the Waikato and Waipa Rivers in Table 3.11-1; and
- b. recognising that further contaminant reductions will be required by subsequent regional plans and signalling anticipated future management approaches that will be needed to meet Objective 1.

105. Forest & Bird's submission was that the reference to values and uses was uncertain, the reference to adaptive management was inappropriate and the staged approach deferred action that should be taken now.
106. The officer recommendation addresses some of these concerns but does not resolve our concern with the staged approach and removes the reference to values and uses rather than clarifying it.

107. The objective as proposed and as recommended by the officer is uncertain about the actions to be taken and what is to be achieved and Forest & Bird agrees with DOC that it should be deleted.

Objective 5

108. Objective 5 as notified provided:

Tangata whenua values are integrated into the co-management of the rivers and other water bodies within the catchment such that:

- a. tangata whenua have the ability to:
 - i. manage their own lands and resources, by exercising mana whakahaere, for the benefit of their people; and
 - ii. actively sustain a relationship with ancestral land and with the rivers and other water bodies in the catchment; and
- b. new impediments to the flexibility of the use of tangata whenua ancestral lands are minimised; and
- c. improvement in the rivers' water quality and the exercise of kaitiakitanga increase the spiritual and physical wellbeing of iwi and their tribal and cultural identity.

109. It needs to be read in conjunction with Policy 16,

110. The intent and effect of Objective 5 is not clear. A literal interpretation of the wording "*new impediments to the flexibility of the use of tangata whenua ancestral lands are minimised*" is that tangata whenua ancestral lands are set apart from other land in that land use can be intensified.

111. The s 42A report, ambiguously responds to Forest & Bird's submission that this objective does not authorise use and development of maori land but rather provide a consent pathway¹² and for "policy support at the consenting stage".¹³

Objective 5 does not intend to authorise the use and development of Māori Land, it recognises the relationship of tangata whenua and their ancestral lands. Officers do not agree with the Forest and Bird that Objective 5(a)(ii) suggests tangata whenua can undertake activities which could contribute to the degradation of water quality and may risk the ability to meet the attribute limits and targets. Any noncomplying activity that passes through the Section 104D(1)(b) gateway must still be assessed under section 104 in terms of the effects of the activity. While both Objective 5 and Policy 16 provide policy support for consideration at the consenting stage, they do not mean that a consent application relating to Māori land will be approved in all cases, and there are other, directive, objectives and policies that also need to be had regard to.

¹² 438

¹³ 439

112. Forest & Bird considers that more clarity is needed in how this provision will work in an overallocated catchment. Elsewhere the s42A report opposes increases in N losses.¹⁴

The main reason for this is that the overall level of N loss from farming activities within the entire catchment needs to decrease. Allowing even minor increases in some areas, for whatever reason, inevitably means that reductions in losses in other areas need to be even greater. This 'robbing Peter to pay Paul' approach was considered by Council as part of the Lake Taupō Variation 5 process and was largely rejected, other than in a minor respect for undeveloped and forested land where Rules 3.10.5.4 and 3.10.5.5 provided a limited development allowance of 2 kg N/ha/year above relevant deemed background leaching rates.

113. The problem with Objective 5 and Policy 16 this is they it does not clearly set out how tangata whenua ancestral lands fits into the rejection of "*robbing Peter to pay Paul*".

114. If it is proposed to allow for development and intensification of tangata whenua ancestral lands then this needs to be made express and the implications of this in terms of reductions required elsewhere needs to be considered. If allowing intensification of tangata whenua ancestral land is to occur, then:

- a. the increase in losses that will occur needs to be quantified; and
- b. where this will be offset (by an increased reduction in losses) needs to be identified.

115. This is not something that can be worked out through the consent process.

Objective 6

116. Objective 6 as proposed provided:

- a. Nitrogen, phosphorus, sediment and microbial pathogen loads in the catchment of Whangamarino Wetland are reduced in the short term, to make progress towards the long term restoration of Whangamarino Wetland; and
- b. The management of contaminant loads entering Whangamarino Wetland is consistent with the achievement of the water quality attribute[^]targets[^] in Table 3.11-1.

117. Forest & Bird supports:

- a. DOC and Fish and Game on the need for a specific objective for Whangamarino Wetland;
- b. the inclusion of the wetland within its own FMU.

118. The objectives set out by DOC is clearer however the inclusion of a dates is also desirable, although the exact dates are not finalised.

¹⁴ 149

Water quality is improved within the Whangamarino Wetland FMU and protected from contaminant discharges to achieve the water quality attribute limits/targets in Tables 3-11.1, 3.11-1a and 3.11-4 by [xx].

119. The appropriate attributes tables will need to be clarified by the relevant experts. We also consider that this objective can be identified as a freshwater objective for the purposes of giving effect to the NPSFM.

New Objective 1

120. DOC has proposed an overarching objective for integrated management. Integrated management is an important function under s30(1)(a) of the RMA to achieve sustainable management of natural and physical resources.
121. The objective needs to be both to restore and protect the health and wellbeing of the Waikato River to aligned with achieving the Vision and strategy and objective 3.4 of the Waikato RPS. Forest & Bird supports the new objective as amended below:

Air, land, fresh water bodies, coastal water and ecosystems are managed as integrated and connected resources to restore and protect the health and wellbeing of the Waikato and Waipā River catchments; ki uta ki tai – mountains to the sea.

New Objective 2

122. DOC has also proposed a new objective to restore and protect the health and well-being of freshwater and the CMA directing management to achieve outcomes including to recognise and provide for indigenous biodiversity.
123. While Forest & Bird is supportive of the objective and outcomes sought, there is some overlap with other objectives and direction which would be appropriately set out in in policies to achieve those objectives. There is some uncertainty with respect to reference to the CMA as opposed to the coastal environment and what recognising and providing for indigenous biodiversity means.
124. Ms Kissick appears to support the inclusion of CMA is intended for the purpose of capturing effect on coastal waters from land use and discharges to water beyond the CMA to give effect to the NZCPS and NPSFM. This intent is supported by Forest and Bird.
125. However, the term CMA is unnecessarily confining in our view as the NZCPS applies to the coastal environment. The NZCPS sets out requirements for water quality with respect to the coastal environment.¹⁵ Specific consideration to the CMA at an objective level in PC1 detracts from full direction of the NZCPS. However it would be appropriate to set specific policy direction to achieve Policy 22(2) with respect to sediment in the CMA.

¹⁵Incl. Policies 21, 22 and 23 NZCPS

126. The management outcomes for indigenous biodiversity and wetlands are uncertain and do not reflect the requirements for maintenance and protection under s30(1)(c)(iii) and (iiia) and (ga) and s6(a) and (c), or the objective to restore and protect set out in Vision and Strategy and objective 3.4 of the Waikato RPS.

127. Forest & Bird would support a new Objective 2 as set that provides:

The use of land and water within the Waikato and Waipā River catchments:

- Safeguards the life supporting capacity of aquatic ecosystems, including in the coastal environment;
- Restores and protects indigenous biodiversity including freshwater fish species;
- Restores and protects the significant values of all wetlands; and
- Ensure that overall water quality in the catchments is improved.

New Objective 3

128. The DOC has proposed an objective for implementation to safeguard ecosystem health of all wetlands.

129. While this objective is not a freshwater objective in terms of the NPS FM, it is an appropriate plan objective setting out the desired short term outcomes to align policy and method implementation to give effect to the NPS FM with respect to wetlands.

Attributes Tables

130. The key issue in the attribute tables is the addition of medium term targets. AS noted Forest & Bird supports Ms Marr, Ms Kissick and Ms MacArthur that they should be included but acknowledges that work has to be done to determine what the targets are.

131. Forest & Bird is content to support the evidence and submissions by DOC and Fish and Game on the balance of Table in 3.11.1.

CONCLUSION

132. PC1 is fundamentally flawed. It sets what it says are ambitious 80 year targets but provides no framework to achieve these targets, except a requirement to implement undefined actions by 2026 that will go 10% of the way towards the targets.

133. This creates a planning vacuum. There is no guidance as to what is required to achieve the 2096 targets after 2026. It is not clear how are consents to be considered in this vacuum, although it is most unlikely they achieve the 2096 targets, as this would require catchment wide reductions that can only be implemented by way of a plan change.

134. There are likely to be many years, between 2026 and a new plan being advanced, where this vacuum, where there are no provisions which set out how the targets are to be met.
135. Another critical issue that arises relates to load to come. If Mr Williamson is right then the timeframe and trajectory need to be reconsidered.
136. Forest & Bird's view is that the commissioners need to make some an important decision about whether PC1 is fit for purpose. Forest & Bird says it is not. If the Commissioners agree, the a final decision cannot be made and an interim decision or minute should be issued that resolves some of the key issues such as:
- a. appropriate timeframes;
 - b. trajectory;
 - c. the need for medium term targets;
 - d. how these targets are to be achieved.
137. The Council would then be directed to provide responses to these matters. This would be considered through the hearing process to ensure that PC1 was fit for purpose and has at least some prospect of meeting its objectives.
138. If decisions are made to advance the notified plan in its current form, then a critical opportunity to address the water quality issues in the Waikato and Waipa Rivers will have been lost.
139. This submission is made in the knowledge that similar issues are likely to arise in later hearing blocks:
- a. the officers have signalled a change in approach to a number of important matters;¹⁶
 - b. targeting the "75th percentile of dairy farmers" is indefensible

Dated 26 April 2019



Peter Anderson
Counsel for Royal Forest And Bird Protection Society of New Zealand Incorporated

¹⁶ 132