

BEFORE THE Waikato Regional Council Hearing Commissioners

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of Waikato Regional Proposed Plan Change 1 –
Waikato and Waipā River Catchments

**BRIEF OF EVIDENCE IN CHIEF OF HAMISH LOWE
ON BEHALF OF THE WAIKATO AND WAIPĀ RIVER IWI
IN RELATION TO THE TOPICS FOR HEARING BLOCK 3
(Submitter No. 74035)**

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INTRODUCTION, QUALIFICATIONS AND EXPERIENCE

1. My name is Hamish Timothy Lowe.
2. I am an Environmental Scientist with Lowe Environmental Impact Limited.
3. My evidence is given in relation to matters in Plan Change 1 (**PC1**) that relate to the interpretation and implementation of Policies and Rules, and their associated schedules, which impact on farming systems.
4. I have previously provided the following statements of evidence:
 - (a) a Block 2 Statement of Evidence in Chief dated 3 May 2019.
 - (b) a Block 2 Rebuttal Statement dated 10 May 2019.
5. I confirm the qualifications and experience set out in my 3 May 2019 Statement of Evidence in Chief.

EXPERT WITNESS CODE OF CONDUCT

6. I confirm that I have read the 'Code of Conduct' for expert witnesses contained in the Environment Court Practice Note 2014. In the same way as I would if appearing in the Court, my evidence has been prepared in compliance with that Code. In particular, unless I state otherwise, this evidence is within my sphere of expertise and I have not omitted to consider material facts known to me that might alter or detract from the opinions I express.

EXECUTIVE SUMMARY

7. The following points are a summary of my evidence:
 - (a) Clarity is required as to whether *data exchange specifications* are part of the Plan content being considered, as it is implied that they will be determined at a later stage with no assurance that all parties will have involvement in the process.
 - (b) The Reporting Officers' change to the requirements in Farm Environment Plans (**FEPs**) generates thought and opportunity to craft a FEP unique to a farm. However, I consider greater certainty is required, specifically to address the potential for varying interpretation of both the information that is needed and compliance

or approval by council staff or a Certified Farm Environment Planner (CFEP) assessor. This is particularly regarding the level of detail required to show the farming practices are consistent with the Objectives and Principles of Schedule 1. This could mean the specific requirements (Part B) are developed further and split into:

- (i) high intensity farming operations (with the greatest contaminant risk potentially focusing on nitrogen and pathogens); and
 - (ii) lower (medium) intensity farming operations (with the greatest contaminant risk being sediment and phosphorus).
- (c) Unfortunately, the approach of moving away from specific standards is inconsistent with Policy 2 requirements. Requiring specific and minimum standards should see the adoption of an acceptable level of performance or operation at which compliance can be assessed; being you either comply or not, or you meet or not. The current Schedule 1 requirements do not provide standards to enable compliance to be assessed, and therefore it will be hard to comply with Policy 2 requirements.
- (d) I support the approach of a dedicated focus on reviews (Part C) and changes (Part D) as this provides clarity of how changes are made and who approves them. I suggest there is an addition to Part C which states: *“Should a FEP be prepared by a CFEP, then any review and approval of the FEP is to be undertaken by a different CFEP”*. I have suggested an amendment to the Glossary to clarify this.
- (e) I consider that improvements made by a farmer, whether they are small and not triggering a FEP review, or more significant, need to be captured so that the accounting framework can be updated. In addition, while Schedule 1 provides for the criteria to revise FEPs, it should be complemented with a requirement to update the Nitrogen Reference Points. I suggest insertions to consent conditions to cover this based on farm intensity and risk.

- (f) Finally, some of the language used in the FEP section needs to be put in plain English so that the meaning and effect is clearly understood.

PURPOSE AND SCOPE OF EVIDENCE

8. My evidence focuses on the changes to Schedule 1 of PC1. There have been substantial changes made. Accordingly, within the limitation of the available time, I have attempted to focus on and traverse the issues I consider to be most pertinent.

SCHEDULE 1

Part A - Data Exchange

9. Part A notes that:

“The Waikato Regional Council data exchange specifications will set out the standards and detail of the data exchange process to be used by external industry parties in the provision of FEPs.”

10. This provision implies that the standards and process are not part of the Plan content being considered. It also implies that Waikato Regional Council (**WRC**) will be determining them and requiring they are met at some later stage.
11. The issue here is that when detail (standards and process) are deferred, they are not part of the open forum debate associated with this plan change. It also implies that WRC will be setting the standards and process, with no assurance that the parties that will have input regarding their suitability.
12. Clarity is needed as to what is meant by “*data exchange specifications*”, how they are to be developed and whether the term needs to be defined in the plan. Should there be the setting of specifications, then there should be the involvement of the community (including the River Iwi) and industry in setting them, as is the case for managing plan changes.
13. If the data exchange specifications result in the setting of consent compliance points at some future stage, then the method of setting these compliance points should be clear so that those who will be having to meet these requirements can be assured they will be fair and reasonable.

Part B - Method

14. Schedule 1 detailing requirements for Farm Environment Plans (FEPs) has been re-written. The Reporting Officers have changed the requirements from a nominated specific detail approach to a generic objectives and principles approach. This primarily relates to Part B of Schedule 1.
15. The specific detail approach (in the notified version) sets out very clearly what should be provided in a FEP. The positive for this approach is that it is very clear what is required, which can then be used as a compliance tool for an FEP assessor (i.e. it is either provided or not). The negative to this approach is that land uses are variable across catchments and some of the information sought is not practical or relevant to specific land uses or in some catchments. This potentially creates inflexible criteria, or alternatively some form of judgement as to what is needed to comply with Schedule 1 requirements.
16. The generic objectives approach (the s42A version) provides overarching guidance as to what should be considered as the content of a FEP. Positives for this approach are that it generates thought and opportunity to craft a FEP to suit the specific needs of individual land uses and localities. The negative is that the specific detail required, and the minimum standard, is not clearly identified. This means that there could be a large degree of subjective interpretation as to what is included or actually needed. Further, the process of approving the FEP will also be subjective and could be variable between council staff assessing them and CFEPs certifying the plans. This potentially creates an environment of different and/or shifting goal posts and may mean WRC ends up with variable FEP outcomes.
17. I believe greater certainty is required, specifically to address the potential for varying interpretations of both the information that is needed and process of compliance or approval by the council staff/CFEP assessor. For example, what is the level of detail required to show the farming practices are consistent with the objectives and policies of Schedule 1?
18. Ultimately there needs to be a combination of certainty through specific requirements and flexibility through thought-provoking idea generating considerations, of which the latter are difficult to apply a yes/no test to. This

balance is critical, and I acknowledge getting it right is difficult. What is made more challenging for PC 1 is the highly variable characteristics of the catchments and the array of land uses. This is where the approach in PC 1 differs from other recent plan changes where the range of land uses and landforms are less diverse; for example some of the Canterbury plan changes envisage a more consistent land form.

19. In my opinion, while the generic objectives approach considerations are appropriate from the perspective of generating ideas and opportunities, a more tailored schedule of specific requirements should be developed to reflect the range of land uses and landforms. I consider this can then be used to guide the specific requirements (Part B) into:
 - (a) high intensity farming operations (with the greatest contaminant risk potentially focusing on nitrogen and pathogens); and
 - (b) lower intensity farming operations (with the greatest contaminant risk being sediment and phosphorus).

20. The split identified above could align with the rule framework and allow the predominately lower intensity hill country sheep and beef farms to have a different focus on specific requirements for developing FEPs that relate to the predominately flatter higher intensity dairy farms. I note that low intensity farms are effectively permitted activities in accordance with Rule 3.11.5.2 and do not require FEPs. Therefore, this would mean that the medium intensity farms covered by Rule 3.11.5.2A could have requirements more focused on erosion management, sediment loss and phosphorus. The higher intensity farms covered by Rules 3.11.5.3 (FEP within a Certified Industry Scheme), 3.11.5.4 (FEP not in a Certified Industry Scheme) and 3.11.5.5 (discretionary rule) could be more focused on nutrient losses and pathogens, and compliance with the Nitrogen Reference Point 75th percentile.

21. This split also allows consideration to be given to the way nutrient pathways are managed, whereby the higher intensity farms follow a stricter path for describing overall nutrient management on an ongoing basis. This might mean that the FEP reviews (Schedule 1 - Part C) have more of a focus for regularly updating nutrient budgets on higher intensity farms compared to lower intensity farms. I discuss this issue later in this evidence.

22. With regard to introducing standards, the focus might take into account factors such as the Nitrogen Reference Point and have a greater obligation on farms with a Nitrogen Reference Point over the 75th percentile, compared to farms less than the 50th percentile. This could be in addition to the activity status (consent requirement) identified above that picks up on farm intensity as determined by stocking rates.

Part C and D

23. I support the approach of a dedicated focus on reviews (Part C) and changes (Part D) as this provides clarity of how changes are made and who approves them. Specifically, it provides clarity that a CFEP does not need to be involved with making the changes, but simply evaluating that the changes are appropriate. This clarity serves to cut down on what was anticipated or perceived to be a high ongoing workload for the CFEP's. It does however raise the question about who prepares FEPs.

Preparation of FEPs

24. Section 3.11.4.3 of Block 2 s42A report (page 37) states:

“...A Farm Environment Plan will be prepared by a certified person as per the requirements outlined in Schedule 1, ...”

25. However, the direction provided by Part C of Schedule 1 suggests that reviewing of a FEP needs to be undertaken by a CFEP. If the role of the CFEP is merely for reviewing, then the scope of involvement of CFEPs is different, and this may influence the quality of FEPs prepared. Further, industry capacity requirements for CFEPs will be somewhat less if they are not required to prepare the FEPs.
26. In addition, a lot of detail in the FEP is technical in nature and many farmers will struggle to provide it, therefore requiring external assistance, potentially from a CFEP. To enable the rural professional industry to know what the opportunities are, and what will be the requirements, further clarity is needed as to the role of CFEP in preparing and reviewing FEPs.
27. If this is the case and there is a requirement, or a high likelihood, that a CFEP will assist or prepare a FEP, it is unclear if the same CFEP can sign off the FEP (in accordance with Parts C and D). I believe that to manage

consistency, there needs to be peer reviewing, or at least a degree of moderation¹, of FEPs. This would require a different CFEP to certify a FEPs. My suggestion is there is an addition to Part C which states:

“Should a FEP be prepared by a CFEP, then any review and approval of the FEP will be undertaken by a different CFEP that is working for a different organisation”.

Management approval and role of CFEPs

28. FEPs have to be approved by a CFEP, and the CFEP has to have a reviewing endorsement issued by WRC. Apart from the definition provided in the glossary, the criteria for the approval of a CFEP and reviewing endorsement is not clear. To provide confidence to rural professionals, the approval process and criteria that the CFEP must meet should be transparent and made publicly available. Included in this information should be details of audits and moderation process that WRC will administer to assess commonality between CFEP, and a method to correct or regulate performance to ensure consistent standards are met. This should also include censuring or requirements for corrective action if FEPs are not at a standard needed.
29. The need for an audit or regulation process is more critical if having a satisfactory FEP is needed to demonstrate compliance with a specific rule. In other words, if a consent is dependent on having a FEP, then assurance is needed that a consistent level of evaluation and diligence in approving FEPs will be applied across all farms.
30. I believe further clarification as to the approval, certification and auditing processes of CFEP is needed. Specifically, are they:
 - (a) required to simply assess the FEPs and determine if the content and what is described is appropriate; or
 - (b) also tasked with making amendments to improve the FEPs before they certify them.

¹ Moderation – a process whereby consistency is checked across assessors and documents.

31. Clarity to the role of CFEPs could be assisted if the Glossary is amended to include the following:

“For a particular farm or enterprise, the role of a Certified Farm Environment Planner is to:

- a) Assist that farmer with preparation of a Farm Environment Plan; or*
- b) Review and certify the Farm Environment Plan with purpose of providing an expert opinion whether farm activities are being undertaken in a way that is consistent with objectives, principles and standards in Schedule 1 when required, being:
 - (i) prior to lodging a land use consent application;*
 - (ii) within 12 months of the granting of a consent application;*
 - (iii) in accordance with intervals set out in the conditions of consent; and*
 - (iv) when there has been a change in the FEP that requires recertification.**

A Certified Farm Environment Planner is NOT to:

- a) assist a farmer with the preparation of a FEP and then personally certify, or be part of an organisation that certifies, that same plan; or*
- b) as part of the certification process, rewrite or modify the plan to assist with its certification.*

A Certified Farm Environment Planner must be registered and approved by the Chief Executive of the Waikato Regional Council and abide by the requirements including professional development obligations, professional conduct and impartiality. They will be subject to having FEPs they prepared audited and moderated, as required, and should there be continual inconsistency and deficiencies in the quality of their FEPs then their registration may be revoked.”

Changes to FEPs

32. The addition of Part D makes it very clear there is a need for changes to FEPs to be reviewed by a CFEP. This means that farmers can make continuous improvements without having to ask and seek approval for minor adjustments. However, it will be critical that farmers keep records of those changes so that when the FEP is reviewed, all changes are captured and can be assessed.
33. More importantly, I note that many small changes, particularly improvements when totalled over a large area (catchment), could have a significant impact on catchment nutrient balances and the WRC administered accounting framework. Therefore, I believe changes, whether they are small and not triggering a FEP review, or more significant, need to be captured so that the accounting framework can be updated. I discuss this further below with regards to reviews.

Review

34. PC1 puts emphasis on developing a Nitrogen Reference Point, which will ultimately be a critical starting point with regard to establishing the accounting framework. In my Block 2 Evidence in Chief, I questioned the purpose of Schedule B's requirements, and in particular whether its purpose was for a one-off baseline assessment or for continual reassessment of the Nitrogen Reference Point.
35. I note that Objective 3 states:

“Actions put in place and implemented by 2026 to reduce diffuse and point source discharges of nitrogen, phosphorus, sediment and microbial pathogens, are sufficient to achieve the short-term water quality attribute states in Table 3.11-1.”
36. I question how attainment of Objective 3 can be assessed if the changes made to FEPs are not also included as updates to the WRC-administered accounting framework. This would include the periodic updates of Nitrogen Reference Points from properties subject to Rules 3.11.5.2A, 3.11.5.3, 3.11.5.4 and 3.11.5.6A.

37. While Schedule 1 provides for the criteria to revise FEPs, it should be complemented with a requirement to update the Nitrogen Reference Points. I suggest that farms requiring consents should have a mandatory reporting and review requirement to assist with updating the accounting framework. This could be linked to the highest risk farms, which are likely to be the farms where the greatest rate of change may be seen. The mandatory review requirement, irrespective of term, inserted into the conditions of each consent might be:
- (a) farms with a Nitrogen Reference Point greater than the 75th percentile need to submit a revised Nitrogen Reference Point every 3 years following the date of grant of consent;
 - (b) farms with a Nitrogen Reference Point greater than the 50th percentile, but less than or equal to the 75th percentile, need to submit a revised Nitrogen Reference Point every 5 years following the date of grant of consent; and
 - (c) farms with a Nitrogen Reference Point less than the 50th percentile need to submit a revised Nitrogen Reference Point every 10 years following the date of grant of consent.
38. I believe the suggested wording and requirements above would be best placed in consent conditions, as the Nitrogen Reference Point is a standalone requirement of Rules 3.11.5.2A, 3.11.5.3, 3.11.5.4 and 3.11.5.5 (including Rule 3.11.5.6A). These rules provide for reviews to be a matter of discretion.
39. A further reason for providing a review is that it provides farmers an opportunity to check their on-farm performance against the targets, specifically the water quality attribute states in Table 3.11-1. Many farmers will be making considerable investments in contaminant reduction mitigations, and a review process will provide reassurance as to whether the efforts they are undertaking are producing the desired results, or whether further efforts are needed.
40. However, in my view, the above is contingent on WRC closing the loop and interpolating changes of Nitrogen Reference Point against water quality improvements and, in particular, providing a commentary on the success of

meeting short-term water quality attribute states in Table 3.11-1. Irrespective of the mechanism used, Objective 3 should place some responsibility on WRC to provide a level of analysis and feedback to the farming community and CFEP.

41. If the collective efforts being made on farm to improve water quality are not achieving the desired result, then WRC may need to consider implementing alternative or additional methods at the FEP or sub-catchment scale to get the desired change. These could be insisting on implementing a higher level of Good Farming Practices or tightening the standards specified in Schedule 1. I note that Rules 3.11.5.2A, 3.11.5.3, 3.11.5.4 and 3.11.5.5 (including Rule 3.11.5.6A provide for achieving Good Management Practices and management of effects as matter for which discretion applies.
42. Such an approach may need to be signalled in the plan implementation methods.

Setting minimum standards

43. As noted earlier in this evidence, Schedule 1 has been largely re-written with a move away from a nominated specific standard approach. The merits of this I have already discussed.
44. Unfortunately, this approach of moving away from specific standards is inconsistent with the Policy 2 requirements, which state:

“Reduce catchment wide and sub-catchment diffuse discharges of nitrogen, phosphorus, sediment and microbial pathogens from farming activities on properties and enterprises through Farm Environment Plans that:

*a1) set out clear, **specific** and time framed **minimum standards**² for Good Farming Practice; and...”*

45. In my view requiring specific and minimum standards should see the adoption of an acceptable level of performance or operation at which compliance can be assessed; being you either comply or not, or you meet or not. The current Schedule 1 requirements do not provide standards to

² Emphasis added.

enable compliance to be assessed. Objectives and Principles in themselves do not provide standards and a measure as to whether Policy 2 is being met.

46. In order to satisfy Policy 2 requirements, standards should be included, which are more than the provision of maps which are currently the only measure of Schedule 1 compliance.

Language

47. The FEP section (Schedule 1) of PC1 is possibly the section that is most relevant to farmers themselves. The language used by farmers and their understanding of 'planning jargon' can be limited. I am of the opinion that some sections should be re-written in plain English so that interpretation is clear. For example, (Part B 3(b)):

“..and a description of the time bound actions or practices that will be adopted to ensure objectives or principles are met.”

should be replaced with:

“..and where appropriate a description of the timing and actions to meet the relevant objectives or principles.”

Hamish Lowe

5 July 2019