

In the matter of The Resource Management Act 1991

And

In the matter of **Proposed Waikato Regional Plan Change 1 –
Waikato and Waipā River Catchments
Hearing 2**

Statement of Primary Evidence of **Bridget Robson**
for
Timberlands Limited
Submitter number 73036

5 July 2019

Qualifications and experience

My name is Christine Bridget Robson.

Qualifications and Experience

1. I presented evidence on behalf of Timberlands Limited for the Block 1 and Block 2 hearings considering Proposed Plan Change 1 – Waikato and Waipā River Catchments (PC1).
2. My qualifications, experience and the material I reviewed in preparation are as set out in my evidence for the Block 1 and Block 2 hearing for PC1.
3. Although this is a Council Hearing, I have read the December 2014 Environment Court Practice Note - Code of Conduct for Expert Witnesses. I have complied with that Code when preparing my written statement of evidence and I agree to comply with it when I give any oral presentation.

Summary of Evidence

4. This evidence covers an analysis of the Officers' proposed responses on PC1 issues relevant to Hearing 3 for policy and planning, covered in Block 3 of the s42A report, parts C7 to C9. A caveat to that scope is that the split hearing approach means that there are aspects of the material covered in the third hearing that affect my response to material covered in the second. This is particularly so for the relationship between the schedules and the rules. To my mind the content of the Farm Environment Plan is material to the

design of the rule framework and vice versa. I therefore have referred back to the rule construction, as it relates to the functioning of this schedule.

5. I conclude that policy 7 should be retained in a modified form, to ensure that the direction identified by the CSG to continue on a trajectory towards meeting Te Ture Whaimana is evident to those subject to the rules of its first stage; PC1.
6. I conclude that on balance the benefit of having the implementation methods outweighs the effort that will be involved in revising them to match the final form of the policy framework.
7. I support many of the elements of the policy and rule redrafting that increase the emphasis on Farm Environment Plans, as I consider that will provide a more appropriate policy framework than one that focuses heavily on modelled numeric pollutant limits. To my mind the rule design, and how it relates to Schedule 1 in particular, do require further work though. I am concerned that the structure, content, and relationships between policy 2, the rules that require the use of schedule 1, and schedule 1 itself are insufficient to ensure that the FEPs will consistently deliver a meaningful practice improvement. This is partially in light of the recommendation to remove rules that explicitly codified required performance for effluent management that were in the Waikato Regional Plan. The plan design now places a huge responsibility and broad discretion with those designing and authorising FEPs and their associated resource consents. My observation of this approach as it has played out in other plans is that inconsistencies between consents and on-farm practice can rapidly develop. As can a reluctance to hold people to account. The plan design does not appear to have responses to these problems.

Hearing Part 3 – Parts C7 to C9

Policy framework

8. **Policy 7** sets out broad considerations for future allocation. The s42A recommendation is to delete it, because it considers action beyond the term of the plan. It seems inconsistent to remove Policy 7 on that basis as Policy 4 – future discharge reductions and Policy 5 - a staged approach also extend their reach beyond the current plan. As discussed at length in the evidence in chief for CNIHL for Block 3, given that PC1 is in pursuit of Te Ture Whaimana which has an 80 year time horizon, and that the extensive and expensive CSG process agonised over allocation for years, it would appear prudent to give some sense of direction on what is anticipated in the subsequent stage. In my opinion the substance of Policy 7 should be retained. I provide suggested rewording at Annex A.
9. I consider that the **Implementation Methods** in PC1 should not be deleted. In an ideal world the matters addressed by a number of those methods should be part of Council's BAU operational planning, and the resources for those secured through the long term plan process. However it is evident from the continued struggles to secure compliance with rules in the existing plan that this reliance has not been sufficient. Therefore an

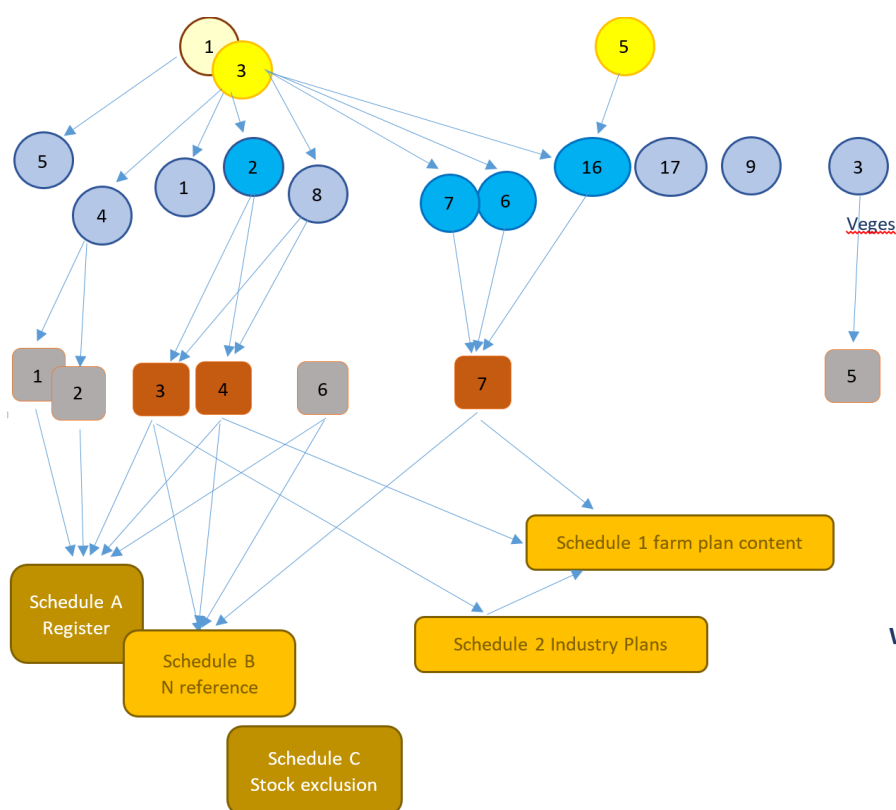
explicit reference to these functions¹ that are required to give effect to the plan may assist in supporting the provision of adequate resources for this implementation.

- To reflect the changes to the policy framework and approach will require amendment of a number of the other implementation methods. However in my view amendment rather than deletion is more appropriate.

PC 1 Construction gaps

11. The series of “wiring diagrams” that follow are to identify the dependencies for the rules to work. The sequence shows the big picture in Figure 1 and ends with focussing on the core relationships I want to concentrate on in Figure 3.

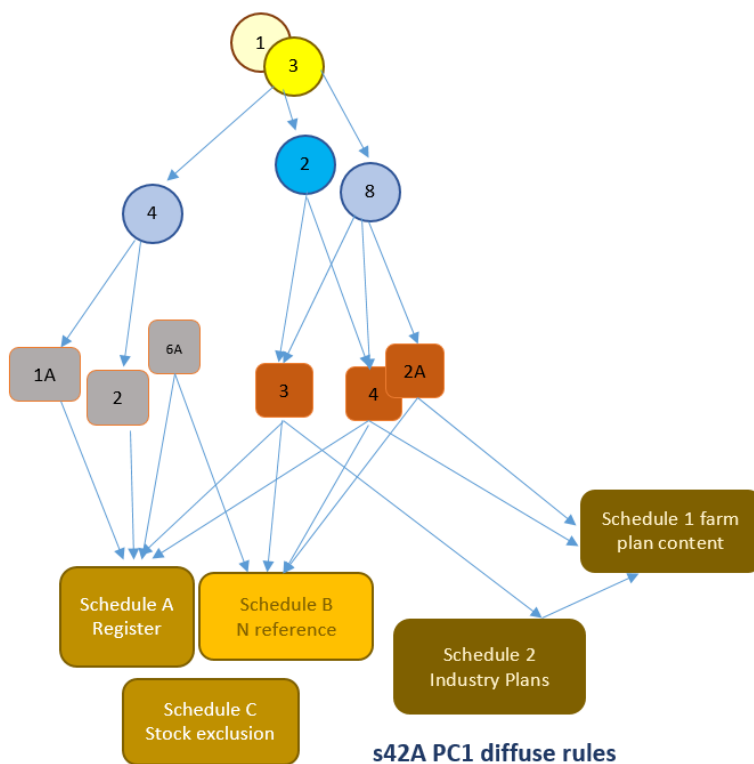
12. Figure 1 below excludes point source components but is otherwise of the plan as Proposed with objectives (yellow), policies (blue) rules (brown and grey) and schedules (orange).



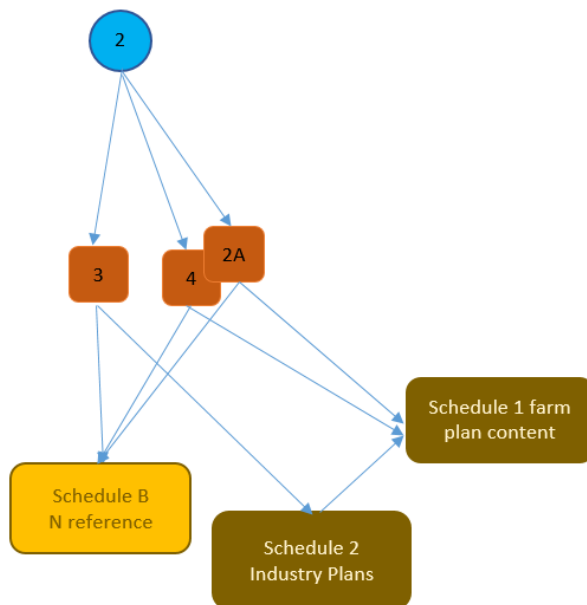
13. It is evident from Figure 1 that Policy 2 drives the consent-based activities (controlled, RD and discretionary activities rules) and that these all require compliance with Schedules A-C and Schedule 1.

14. Figure 2 below excludes all but the primary rule functions for diffuse sources, and shows the s42A recommended structure. Again the centrality of policy 2 and the reliance on the schedules is evident.

¹ Information provision/education, guidelines development, information collection and reporting, preparation for future diffuse source discharge management, and monitor/enforcement including for permitted activities.



15. Figure 3 strips the structure back to the basic core regarding the FEP



16. I have presented this relationship in this simple visual format in the hope it will assist in identifying where the quality control components of those creating and auditing the FEPs is provided, so that to giving effect to the objective remains:
- a. Consistent
 - b. Effective, in improving land use practices in so far as they affect water quality.

17. Policy 2 identifies that:

- FEPs will be used to reduce diffuse discharges (a1)
- FEPs must set out clear, specific, minimum standards for Good Farming Practice² that are time bound (a.) (although there are no explicit links between GFPs and a1).
- FEPs must be consistent between Council consent FEPs and any industry derived FEPs in the way they are developed, monitored and audited (2 b.³).

18. The layout of the plan has rules that present (a few) hard limits in different places. Setbacks are in Schedule C and effluent rules (now possibly absent, but previously section 3.5 of the WRC plan). There may be others. From an implementation perspective some cross referencing of rules relevant to the Schedule 1 FEP would be helpful.

19. Rule 3 also specifies that the plan be approved (but not necessarily prepared) by a Certified Farm Environment Planner (CFEP). The glossary defines a CFEP as:

***Certified Farm Environment Planner:** is a person certified by the Chief Executive Officer of Waikato Regional Council and has as a minimum the following qualifications and experience:*

- a. three years' relevant experience in agricultural and horticultural farm systems; and*
- b. a Certificate of Completion in Advanced Sustainable Nutrient Management in New Zealand Agriculture from Massey University or an equivalent advanced training or a tertiary qualification in sustainable nutrient management; and*
- c. experience in soil conservation and sediment management; and*

agrees to follow the procedures and guidelines set out by Waikato Regional Council and audits of the Certified Farm Environment Planner's work by Waikato Regional Council show that the Planner is preparing and/or approving Farm Environment Plans in accordance with the procedures and guidelines.

Note: Certified Farm Environment Planners will be listed on the Waikato Regional Council's website.

20. Policy 2 and Rule 3 thus rely on documents and processes outside of PC1 for:

- a. suitable FEP content (based on the concept of “minimise”, reliance on broad principles of what GMPs might be, and any presumption of the relationship between GMP and water quality effects) and
- b. processes surrounding the appointment and use of CFEPs, to develop and audit the FEPs.

21. I consider there is an inappropriately high level of reliance on nebulous documents to support Policy 2 and Rule 3 given how fundamental they are to the functioning of the plan.

FEP content –needs some basement requirements

² means industry agreed and approved practices and actions undertaken on a property or enterprise that reduce or minimise the risk of contaminants entering a water body

³ Policy 2 b. Undergo **the same level of rigour** in developing, monitoring and auditing **set out in a Farm Environment Plan**, whether the consent holder is a member of a Certified Sector Scheme or not; and

22. Rule 3 requires that the FEP is prepared in accordance with Schedule 1. The s42A revision of schedule 1 now sets out a series of topics that must be considered in the development of an FEP, expressed at a principles level, with frequent use of the term “minimise”. i.e. significant judgement calls are required as to how to interpret “minimise”. The view of what is appropriate to “minimise” might also differ between the CFEP and the farmer.
23. The s42A notes that submitters question the adequacy of the Schedule 1 requirements and the subjectivity of the information to be provided, as it could lead to inequitable application and inconsistent interpretation. It’s not clear how any of these concerns are addressed, as there appear to be no minimum requirements for activities known to have a strong correlation to poor water quality outcomes (such as flawed effluent irrigation practices). Using a principles-only approach may also not delve deep enough to sufficiently identify what sound processes are, to consistently achieve good performance. Again to use the potentially high-risk practice of effluent irrigation as an example: whereabouts in schedule 1 would farmers or CFEPs be alerted to relevance of considerations such as: process description, operating procedures, maintenance regimes, monitoring (including alarm systems), staff training, contingency systems and mitigation methods?
24. The FEP rules set out a list of topic areas that a property owner must consider how they can improve practice. This approach is appropriate for some actions that require a completely tailor-made approach on site, but not all the land use actions that are known to reduce contaminant discharge do require a tailor-made response. In that regard the FEP rule suite is not adequately supported by other generic rules that require sound practice, such as the rules in the present plan regarding effluent ponds, effluent application and feed pads. To my mind the revised schedule’s outcome and principle-based approach, “*expected to empower land-owners to operate and respond to changing circumstances over time*” has swung too far from a requirement to meet some basic levels of performance into an expectation that all users will be motivated to implement good practice. Real life is somewhere in between and the plan rule structure needs to recognise this.
25. There are activities known to have poor environmental outcomes where a generic minimum standard should be in place. Winter cropping could be one. Relying entirely on a farmer’s concept of appropriate practice for the FEP is insufficient, so a baseline needs to be struck. The practices subject to a baseline minimum standard are those that have been shown to have a strong correlation to significant adverse effects. To remove these merely to have a purist approach to PMP, BPO, GFP... and tailored farm-specific FEPs is wrong. The present design of the rules, in conjunction with schedule 1, rely on an engaged and interested farming community. While there are definitely people in that category, there are also people who will have to be dragged kicking and screaming into compliance. This policy design will not force changes at this poor performance end of the spectrum, yet this “egregious disregard” of basic good practice is what is giving farming in general a bad name, much to the distress of the good operators. Council is serving no one with a policy design that provides no capacity to require basic change from known poor practice.

26. The s42A advises that:

*215. FEPs will still be used to address the matters included in Schedule 1 as notified, and can be used alongside minimum standards. However, **any minimum standards** will sit in the Plan rules and Appendices, rather than within Schedule 1.*

27. Where are these minimum standards? The challenge for the FEP process is to use a system that allows innovation and flexibility, but that also provides accountability for those who do not implement agreed changes or who are unwilling to change from their status quo. This still does not address the need for a performance “floor” of minimum acceptable performance. Other than riparian setbacks these generic minimum standards are not evident in the policy structure shown at Figure 3.

28. Concern about legal challenges to actions required on land, when the subject of the rule is the effect of land activities on water, could be addressed by ensuring that actions have a proven strong correlation between the two. E.g. riparian setback distances should be decided on the basis of their efficacy in reducing contaminant discharges; striking the balance between cost and efficacy. To that end I recall a science presentation to CSG for which the risk:reward for low slope setbacks was approximately 5m, not the 1m that has been recommended for Schedule C.

29. PC1’s approach of requiring farmers to adopt “good” farming practices is intended to result in reduced contaminant losses. However, Schedule 1 is silent about what “good” is, or even what “enough” is. The measures of success for the FEP are in part *process* related - a requirement to maintain a current FEP, and to have the FEP reviewed by a CFEP at specified timeframes, and part *content* related - farm in accordance with the FEP.

30. Where are these practices set out? The only tools available to the Council appear to be the FEPs, which have a defined process, based on agreement between the CFEP and the farmer.

*The Council proposes, where appropriate, the imposition of a more stringent regime through a s128 review of conditions. This would make the use of **enforcement options** much simpler, as it would involve clear non-compliance with a consent condition.*

Enforcement on what? It’s not clear to me how the plan design supports imposing specific performance conditions on a property.

31. More certainty is required in the policies and rules in PC1 to confirm the standards required when issuing resource consents and to confirm that the role of the Farm Environment Plan is to demonstrate how those standards will be met.

FEP audit and RMA enforcement

32. There is no argument that consistency is important regarding FEP commitments, if for no other reason than to support the notion of fairness and proportionate effort. Thus actions required need to be compared to the risks and impacts associated with various farming operations. Some plans contain actions that if not done are highly likely to have a significant adverse effect, but the pathway to ensuring that these are appropriately completed seems stacked against this outcome. Performance consistency is made up of

consistency at the design end, consistency of audit and accountability for actions set out in the FEP, and of ensuring the way that the different CFEPs operate retains some consistency between properties – often termed moderation. The staff report notes that:

The flexibility and pragmatism of the expert judgement review approach creates challenges for enforceability. While it is hoped that the adoption of FEPs and regular reviews by CFEPs will result in widespread adoption of GFP, it is inevitable that some farmers will not be able or willing to change their farming systems to align with GFP... It is proposed that farmers who consistently fail to demonstrate that their farming activities are consistent with the schedule should be subject to more onerous and directive regulatory requirements.

33. Although the concept of Farm Environment Plans is laudable, the redrafting proposed in the s42A report will not ensure that these plans will result in actions for which reliable RMA compliance assessment is possible. The report by Mr Dragten embedded in the s42A correctly identifies that audit and enforcement are two different things:

The FEP review is not a compliance inspection. The CFEPs are not warranted enforcement officers... CFEPs would be under no obligation to report suspected non-compliance to the council. The CFEPs review role is to report their level of confidence that the farm was adhering to each objective and principle in the schedule... It would be the role of a Council compliance officer to follow up on FEP reviews that contained information that may suggest non-compliance with the RMA was occurring.

34. This problem is further compounded by the lack of separation between setting and checking. Again from the s42A:

It is also unclear whether the farm professionals who would seek certification as CFEPs would also have the necessary skills to be effective reviewers. An alternative model ...which separated the CFEP and Review functions ...was rejected.

*CFEPs' conflicts of interest would need to be managed for review quality control and credibility. The Council considered whether the reviewer must be independent of the farm being assessed ... However, there are considerable advantages of a CFEP working with a farmer over time **and building trust with the farmer** is considered likely to result in greater acceptance of the CFEPs guidance. On balance it is considered that the conflict of interest issues could be managed by requiring declarations as part of each FEP the CFEP is engaged with.*

The integrity of the FEP system is reliant on the CFEP's providing high quality guidance and using expert judgement to help farmers identify and implement robust and effective actions and practices that will deliver the water quality improvement sought by PC1.

35. In summary, the auditor's role, carried out by an untrained and possibly uninterested person, are downplayed because the benefits of a rapport between the farmer and the advisor/auditor are regarded as outweighing the risks of an advisor/auditor's loyalty being to their client rather than to the PC1 objectives. Quite frankly it is unfair to put the CFEP in that position. It also potentially introduces a level of subterfuge, whereby the CFEP will not want to draw attention to their client's sub-par performance and instead rely on the compliance staff managing to notice that among a swath of other reports.

36. I consider that Schedule 1 is insufficiently supported by a thorough, consistent "plan, do, check, review" process. The independence of various elements of that process are insufficient. I consider that refinements are required to improve the likelihood of a

consistent performance for similar risks at different farms, and refinements are required to ensure that performance issues are handled objectively.

37. Although it might appear to be kind to avoid putting pressure on poor performers, in fact it has several corrosive effects. If poor performance becomes public it pulls the whole industry into disrepute, based on the uninformed thinking of “like one like all”, reducing social licence to operate. It causes those trying to do the right thing to wonder why they bother. For those sitting on the fence as to whether to perform or not it sends the wrong message, and lastly it puts a huge drag on continuous improvement – including meeting the Te Ture Whaimana objective. For sectors whose activities are generally very low impact (foresters) and who are constrained to very low limits of contaminant discharge by objective 3 of Schedule 1⁴, observing others with high discharge continue to push the boundaries does not support inter-sector goodwill.

Proportionate effort

38. There are concerns that the level of resourcing required to prepare all the FEPs will be overwhelming. There are also concerns that there are low risk properties that will be required to participate in a resource intensive process of FEP development even though they are not the prime target of the plan. And there are concerns that the nature of a FEP makes it very difficult to avoid a resource consent process. I have attached at Annex B a short paper that identifies elements of how we addressed this problem for the NES for Plantation Forestry so that low risk operations were able to prepare a management plan as a permitted activity. This type of approach may be useful in the PC1 context.

Conclusion

39. I consider that Policy 7 and the implementation methods should be retained, after some modification. Suggested amendments to Policy 7 and its associated text are at Annex A.
40. In my opinion the present design of the rules in conjunction with Schedule 1 rely on an engaged and interested farming community. Unfortunately there are others who are less inclined to change practice and it appears that the PC1 policy design will not be effective at this poor performance end of the spectrum. Council would be serving no one with a policy design that provides no capacity to require basic change from known poor practice.
41. I consider that progress towards the objectives of Te Ture Whaimana , and the objectives of PPC1 would be much greater by modifying the policies, rules and schedules to:
- Provide some baseline performance rules to underpin the good practice approach of the farm environment plans,
 - Ensure that the FEP “plan, do, check, review” process uses a formal quality management system approach that does not have the effect of introducing moral hazard, particularly at the audit phase.

⁴ 9. Farm in a manner that does not result in farm nitrogen losses exceeding the farm’s NRP;

Annex A - changes sought to PPC1 provisions, further to those recommended in the s42A report

1. Reinstate all references to intended direction associated with Policy 7

- Preparing for future requirements on what can be undertaken on the land, with limits[^] ensuring that the management of land use and activities is closely aligned with the biophysical capabilities of the land, the spatial location, and the likely effects of discharges on the lakes, rivers and wetlands in the catchment.²

These constraints on land use change are interim, until a future plan change introduces a second stage, where further reductions in discharges of sediment, nutrients and microbial pathogens from point sources and activity on the land will be required.

This second stage will focus on land suitability and how land use impacts on water quality, based on the type of land and the sensitivity of the receiving water. Methods in Chapter 3.11 include the research and information to be developed to support this.⁶

2. Remove text that has the effect of locking in a grandparented discharge

- ~~a property scale nitrogen reference point to be established by modelling current nutrient losses from each property, with no property being allowed to increase losses exceed its reference point⁴ in the future and higher dischargers being required to reduce their nutrient losses~~

3. Reinstate Policy 7, but split into a policy and a method, and identify that the allocation methodology described in the policy is contingent on allocation being chosen as an approach

Policy 7: Preparing for allocation in the future reductions/Te Kaupapa Here 7: Kia takatū ki ngā tohanga hei ngā tau e heke mai ana

Prepare for further diffuse discharge reductions and any future property or enterprise-level allocation reduction of diffuse discharges of nitrogen, phosphorus, sediment and microbial pathogens that will may be required by subsequent regional plans, by implementing the policies and methods in this chapter.

Should Any future allocation be a future approach, should consider the following principles for an allocation regime:

a. Land suitability which reflects:

- The biophysical properties of the land that determine productive potential and susceptibility to contaminant loss (e.g. slope, soil type, drainage class, and geology); and
- the local climate regime that determines productive potential and the likelihood of water storage and runoff patterns (e.g. frost, rainfall and its seasonal distribution); and
- The natural capacity of the landscape to attenuate contaminant loss; and
- the Objective 1 water quality limits[^] related to nitrogen, phosphorus, microbial pathogens and sediment for the surface waters that the land is hydrologically connected to; and
- the desired values[^] in those receiving waters (ecological and human health) and how they are influenced by the four contaminants.

For the avoidance of doubt, land suitability criteria exclude current land use and current water quality, the moderating effects of potential mitigations, and non-biophysical criteria (economic, social and cultural). Instead these factors will be of importance in analysing the implications of a completed land suitability classification.

- ~~b. the biophysical and climate properties, the risk of contaminant discharges from that land, and the sensitivity of the receiving water body, as a starting point (i.e. where the effect on the land and receiving waters will be the same, like land is treated the same for the purposes of allocation); and~~
- b. Allowance for flexibility of development of tangata whenua ancestral land; and
- c. Minimise social disruption and costs in the transition to the 'land suitability' approach; and
- d. ~~Future allocation decisions should~~ take advantage of new data and knowledge.

Method # from Policy 7: Preparing for future reductions

~~To ensure this occurs, c~~Collect information and undertake research to support the preparation for future discharge reductions this, including collecting information about current discharges, developing appropriate modelling tools to estimate contaminant discharges, and researching the spatial variability of land use and contaminant losses and the effect of contaminant discharges in different parts of the catchment that will assist in defining 'land suitability'.

Annex B

NES-PF Using Management Plans as a permitted activity condition

Purpose

- To provide a basis to further discuss the purpose and application of management plans.
- To describe how management plans could be designed with sufficient certainty to be used within the context of a permitted activity
- To seek feedback from SWG on any concerns.

Background

These widely accepted principles - to identify problems before they arise, and have strategies to deal with them – are why Management Plans are valuable. The NES-PF proposes to use Management Plans (MPs) as part of the risk management approach. MPs would identify environmental risks of intended operations, and record proposed operational measures in response to those risks. Using templates, and guidance material that identify good risk management techniques, would lead to good planning and management practice. Management Plans would work by:

1. Requiring foresters to **identify and develop appropriate responses** for specific risks posed by the intended operations on the site. The plan would:
 - a. **identify risks** - all main sources of increased risk e.g. streams, archaeological sites, neighbours are identified and mapped at an operational scale
 - b. **identify responses** to those risks, which do one or more of:
 - i. avoid the risky areas
 - ii. mitigate the effect of the activity in areas of increased risk, by specifying in the plan the extra or specific mitigation techniques
 - iii. identifying the remedy, should an activity trigger an effect e.g. specify how slash would be removed from a culvert entrance.
 - c. **Provides flexibility of response**, according to the site. Foresters choose the techniques, for a range of local and site specific conditions, scale, and complexity. Responses are tailored for each site, (relevance and proportionality).
2. Identifying /prompting foresters to consider whether their plan is likely to meet each of the standard permitted activity conditions, and to assess whether they should instead be applying for a consent.
3. Supporting councils' awareness of site specific conditions and proposed courses of action, enabling them to target high risk activity for monitoring.

Requirements for Management Plans for them to be valid⁵

The discussion document did not include MP examples to give submitters an insight into what the intended design was. MPs, as a permitted activity condition for Harvesting, Earthworks and Quarrying have thus raised questions in the minds of submitters regarding **certainty** and **enforceability**.

Valid MPs must be sufficiently certain

To be sufficiently certain requires that the PA condition for a MP must identify what the MP contains in a manner that is certain, and reserves no discretion. The PA condition thus retains certainty, and is able to be assessed for compliance. This should meet RMA s43A(4) requirement.

Valid MPs must be enforceable

The plan must contain sufficient detail, in a form that enables audit (e.g. via compliance monitoring). The MP template requires that to complete the MP the forester must positively identify presence or absence of the risk factors. The plan must have responses to those risks on site. The intention is to create the plan so that by following the template the plan can be used as a basis to audit.

Councils are concerned that they have responsibility for reviewing the plan and identifying any issues with it. The council review process is only to determine whether all the elements that would make it complete are there.

Possible scenarios:

- **The plan is incomplete. It has not followed/completed the template.**
It has not met the PA condition requirement of being an appropriate standard. Thus the activity is not permitted. Council can reject the plan and:
 - allow the plan to be resubmitted or
 - require that a consent is sought.

Completeness is very important in creating the certainty required for audit. An incomplete plan would compromise council's ability to assess the MP's success in meeting the PA conditions and may reduce their ability to run a successful prosecution.

- **The plan is complete but contains implausible remedies** (*risk of not meeting the PA conditions*).
Council cannot reject the plan. They can:
 - identify that the methods proposed are unlikely to meet the PA conditions, remind the forester that all the other PA conditions must be met, and that they have concerns that the plan as submitted is unlikely to be successful in doing this
 - suggest that the forester may want to reconsider and resubmit
 - advise the forester that their activity will be on the high risk audit sites
 - advise council's course of action if the PA conditions are not met (abatement, enforcement, associated charges)

Council are receiving only and would not have the ability to reject. The forester has made an assessment on whether they can meet the PA conditions, and have provided a MP in support of that premise. The onus is on the forester to meet both the PA and the MP. If implementation of the MP is insufficient to meet the PA conditions, the onus is still on them.

⁵ [legally sound, sufficiently certain, thus practicably enforceable](#)

- **The plan advises that something is absent** when it is actually present. The plan is **inaccurate** and would not meet the PA condition. This would be discovered on audit, possibly at desktop audit.

Management Plan Design and Implementation

Template approach

The template will prescribe with sufficient certainty what content is required to meet PA rule requirements. It will also provide for site specific planning, relevant to the scale and complexity of a particular operation. It will provide guidance on how to fill in the template, and on the management options for dealing with site-specific conditions.

The design will provide **certainty on what must be included** E.g. a map of a particular scale range (1:5000 – 1:20,000) must be included. It will require that each risk or its absence is recorded. E.g. perennial stream - present or absent? The design will also provide **flexibility to choose the specific response** to the matters that must be included. E.g. perennial streams must be mapped on the harvest plan (certainty), the forester has choice as to how they will manage harvesting risk around streams (flexibility). The MP must contain information on what those management choices are (certainty).

The guidance will describe risk mitigation options - generally as reference to Best Management Practice (BMPs) for particular risks - potentially using a menu approach to help with option choice. The MP will then stipulate which measures or suite of measures will be used in a specific operation.

Alignment with permitted activity conditions

The MP could be required to have clear and explicit linkages to the standard PA conditions. Mapping this relationship would help identify whether/how the MP demonstrates a how it would meet the other PA conditions - as well as being a complying action itself, by providing quantifiable conditions. Drawing attention to the MP *AND* PA conditions highlights the need to consider both, and perhaps further clarifies that for it to be PA requires that all the PA conditions are met.

Seeking SWG feedback: Is there value in creating a “wiring diagram” showing the linkages between the standard PA conditions and the MP? In a generic sense? Or is it required per MP?

Plan receipt, Monitoring and Enforcement

Foresters make MPs available to council upon request (and any material amendments subsequently made to the MP). Councils **receive** the MPs; checking that the template has been followed and completed. The MP provides a council with information on which to audit. They can then audit field actions against what they have received. They have not made a judgement call and **accepted** that the MP can do what it says it will do.

Councils are concerned that they won't be judging adequacy of the proposed actions and perhaps requiring amendment of the MP. This is true. To meet the PA requirement, such discretion cannot be reserved. The forester is making the call as to whether their MP will allow them to meet the other PA conditions. This assessment is one that any applicant weighs up when deciding whether they can meet PA conditions or will need to seek a consent.

The forester has put forward their intended course of action to avoid, remedy and mitigate risks on that site, knowing that they also have to meet the standard PA conditions. Factors relevant to any enforcement action would be whether they followed their MP and/or if the MP is an obvious mismatch to site risks i.e. the mitigations detailed in the MP are known to be incompatible with meeting the standard PA conditions – information they should be able to figure out from the guidance material.

The template will guide the person preparing the MP in how to state which measures they will use. Guidance material identifies what techniques are appropriate in a range of situations. It will provide the relevant range of BMPs, and thus some structured assessment process for deciding whether a suitable selection has been made.

Will councils be able to charge for review of these MPs? Review is for completeness, not suitability per se. Councils have raised concerns that they do not have the ability to charge for costs associated with receiving and assessing MPs for completeness. It is true that their ability to recover costs is constrained. Council should have capacity to fund fair and reasonable costs of making that assessment (via rate contribution or specific charges). Proposed RM Reform would provide the ability to charge specifically for PA monitoring. This would support councils' proactive site monitoring and may reduce concern about capacity to monitor (particularly higher risk activities). Councils can already charge for breaches of PA conditions that result in an abatement notice or enforcement order being issued.

Using MPs to achieve environmental standards is something most corporate foresters already do as part of their harvest plans and EMSs. The evolution of MPs from "content" to "good content" for all foresters is likely to take a bit of practice by all parties. Assessing some sample MPs/ monitoring compliance with PA conditions, on what is a sound relationships between MP actions and PA conditions, would be useful to keep developing the body of knowledge on what works.

Other aspects of implementation

Councils may make staff resources available to assist in preparing MPs (as they do for farming operations). If they then use this as a regulatory tool, council has to be cautious in offering or requiring particular alternatives, for liability reasons⁶ - in the same way that council do not generally provide technical advice for resource consents.

Council engagement with foresters in an advisory capacity requires adequate resourcing of council staff – particularly their technical capability.

Information contained in the MP will build councils' awareness of site specific conditions and proposed management, which allows them to target higher risk activities for monitoring.

A MP should not be required to *promote wider risk management processes, in addition to demonstrating compliance* with PA conditions (a submission request). It is unclear what status would be of a forester who volunteers a range of further actions at the time they prepare their MP (not expressly required by the template), carry those out, and things still go wrong.

Certification of plans

Whether a MP can be approved or certified under s43A(1)(d) would depend on the type of the certification. If it is assessing completeness, then it lends itself to certification. If it is judging the adequacy, that reserves discretion, and thus would not be certifiable.

⁶ *There will be case law on council's liability if they require particular techniques be used*