STATEMENT OF EVIDENCE OF PRIMARY LAND USERS GROUP

ON HEARING TOPIC 3

P.L.U.G. (Primary Land Users Group) is a voluntary organisation made up from members across a broad spectrum of the farming sectors. PLUG was initially formed in opposition to the proposed processes contained within the PC1 documents. As stated previously PLUG believed then and still does that PC1 was not fit for purpose and needed major change to prevent it from having serious perverse outcomes for the Waikato Region and Nationally.

PLUG has had many meetings with Federated Farmers in relation to PC1 and we wish to record our support for their statement of evidence for this block 3 hearing.

1. Some of the issues covered in this evidence arise from the memorandum for WRC dated 5 July 2019:

2. In paragraphs 114 and 115 of the WRC memorandum dated 15 July 2019, the reporting officers have set out their responses to questions about underdeveloped Maori land. In summary, they conclude that 78% of Maori land is underdeveloped and 45% of non-Maori land is underdeveloped.

3. PLUG is trying to ensure that the policy and rule framework for PC1 is robust, effects based, efficient, effective and gives effect to the relevant higher order documents. We recognise that contained in much of the evidence presented there are many variables that are not well understood or for which no data exists.

4. PLUG believes that the reporting officers' analysis in paragraphs 114 and 115 of the WRC memorandum is very brief and no context is provided for it. We appreciate that this analysis is not straightforward and that we are all operating under time constraints (and information limitations).

5. Our purpose in responding to paragraphs 114 and 115 is to simply highlight that the figures provided by the reporting officers may be difficult to draw specific conclusions from. In our view, further investigation is needed to properly understand what land is underdeveloped if this data is to be relied upon for specific policy decisions.

6. In relation to multiple owned and treaty settlement land, PLUG has sympathy for Maori landowners who have not been able to develop their land due to historical impediments and who may try to intensify or change land use under section 16 of PC1.

7. But whilst PLUG supports the ability for the owners of multiple owned Maori and treaty settlement lands to be able to develop their land, we believe that where this has any detrimental impact on other landowners (such as in any allocation models that may be determined etc.) then this detrimental impact should be compensated for by Central Government.

8. An example of the possible impacts on other landowners is in the upper Waikato catchment where the water is over allocated. Should there be a need for a water allocation to be given to Maori landowners to allow further development of multiple owned or treaty settlement lands,

this can only be done by taking part of the allocation of existing users which can only be detrimental to existing operations. We believe that this situation is in effect asking a select group of landowners in the upper Waikato catchment to fund a treaty settlement obligation which rightly belongs with Central Government.

9. The treaty settlement obligations in relation to Iwi land are in effect a contract between Central Government and the Iwi and we believe that it is unfair, inequitable and more than likely ultra vires to expect a select group of landowners in the Waikato Region to fund any such obligation as a result of changes related to implementation of PC1.

10. Mr Sinclair for WRC gave evidence during the Block 2 hearings, about the implementation of Variation 6. Variation 6 was the water allocation plan change and as part of that WRC had to process 2,600 consents for water takes for dairy shed wash down as controlled activities. Mr Allen a submitter from Fonterra, raised concerns about it taking six and a half years to implement the plan, 300 (more complex) consents are yet to be issued and the lack of contact between Council and farmers since consents were issued.

11. There is no doubt that Variation 6 has presented a challenge to WRC in terms of the volume of consents and difficulties in how to deal with catchments that are over allocated.

12. One of the key ingredients for success that was identified through this variation was the need for support with the implementation, from the farming sector.

13. PLUG agrees with WRC that it is likely to be very difficult to implement PC1 if a large number of restricted discretionary activity consents are required (and even more difficult if they are notified). We also foresee difficulty if controlled activity consents are required. PLUG believes that a permitted activity regime (that can be supported by CIS's) will be a critical way of assisting with the implementation of the plan change.

14. Without a permitted activity regime, farmers would need to incur cost through applying for consent (both consenting fees and expert fees for things like assessments of environmental effects).

15. PLUG believes that currently farmers have a low level of trust in the environmental information coming out of regional councils or that adequate information is unavailable and therefore the opportunity for councils to leverage off industry organisations (such as PLUG, Beef & Lamb, Hort NZ etc.), that have farmer trust and networks, is severely reduced. PLUG believes that in addition to providing support for the rural industries, these groups could also provide assistance to WRC in implementing PC1.

16. PLUG firmly believes that WRC's focus ought to be on monitoring and improving the science and understanding of the catchment, as opposed to building a large team of consenting staff with the resultant drain on ratepayer's funds.

17. The WRC as a submitter proposes that clear minimum standards be adopted and that minimum standards should be defined for key high risk activities. There is a suggestion raised that CFEPs will be reluctant to commit farmers to what WRC would consider "minimums" unless there are minimum standards.

18. By their nature, minimum standards are broad brush & overarching, and in diverse catchment like the PC1 catchment, there is unlikely to be a minimum standard that would be appropriate in the majority of cases). The implication is that if stringent minimum standards are adopted, existing farmers will need incur cost to justify departure from them (through a consenting process), which does not appear to be an efficient use of Council or farmer resources (particularly when the real benefit from FEPs will likely be from farmers obtaining them as quickly as possible and getting on with implementing them).

19. In attempting to create certainty, through precise or defined minimum standards, it is likely that greater uncertainty will be created. This is just as much an issue for WRC (with uncertainty affecting its ability to enforce compliance with minimum standards) as it is for farmers (who may not be able to sell or invest in their land due to uncertainty about whether or not they comply with minimum standards).

20. An example of this type of uncertainty is that which arises from minimum standards based on slope and how a slope criterion would be applied to stock exclusion.

21. The issue with this was in defining slope and, in particular, where and how much of the land near or around a stream had to meet the slope threshold.

22. One proposal considered was that if 20% or more of a paddock was above the slope threshold then stock had to be excluded from the stream. This raised various practical issues such as areas where paddocks were very large and naturally had a comparatively small area that was flat. This would have created significant uncertainty for farmers and councils in applying the slope exclusion the issue that would have needed to be considered is where and how the slope was measured.

23. Federated Farmers are proposing a stock unit threshold to avoid the issues associated with slope. PLUG also considers that stock units per hectare per paddock is a better criteria for intensity because it is effects based whereas slope has no consideration of intensity of land use (other than the presumption that the steeper the land the less number of stock but that is not necessarily the case).

24. PLUG also supports Federated Farmers in their promotion of using a tailored approach that develops appropriate actions to address the particular critical source area as opposed to relying on applying non tailored minimum standards everywhere.

25. This then allows for an effects based approach that considers activities that are higher risk and the appropriate GFP practice whilst also providing for consideration of things like water flow paths (which may actually be away from large areas of the stream) and is more appropriate than a standardised approach like the adoption of 5m setbacks everywhere, suggested by WRC.

26. PLUG considers that similar definition and uncertainty issues would arise if intermittent and ephemeral waterways were included in the stock exclusion minimum standards. We can foresee issues in that the assessment of areas that are intermittently wet or depressions

in land will depend on the time of year, type of season or type of weather events, etc. There is also likely to be a high level of subjectivity with no one expert having the same view.

27. Addressing these issues through farm specific actions in FEPs would provide greater certainty than relying on the application of minimum standards that required 5m setbacks from these areas, for example.

28. Staff from WRC have stated their preference for clear minimum standards from a compliance and enforcement perspective. PLUG is concerned about the potential issues with enforcing compliance with FEPs and minimum standards in a strict liability regime, particularly given the likely difficulties in creating clear and certain minimum standards.

29. The issue is that because compliance with rules and consent conditions is a strict liability offence, the reasons for the breach are not taken into account when assessing liability (and there can be a variety of reasons such as rogue staff, adverse weather events, equipment failure etc.).

30. The difference between breaches of these types of rules or consent conditions is that the discharge or effects can be directly observed and measured e.g. you can observe an overflow of effluent, measure the E coli concentration in the stream or calculate the volume of earthworks. However, the same is not possible for diffuse discharges of the four contaminants, and the closest we can get to measuring any of the contaminants is to rely on Overseer (which has already been proven to be inaccurate and unsuitable for regulatory purposes) to model nitrogen.

31. PLUG has concerns about how compliance with FEP's would be enforced and concerns about detailed actions in FEP's becoming consent conditions. Part of our concern is that there can be a wide range of factors that affect the implementation of actions in a FEP (e.g. Flood, drought, animal welfare, health and safety etc.) and there needs to be appropriate flexibility to respond to these.

32. PLUG supports the development of a level of confidence assessment, grading & system of FEP review that strikes a balance between flexibility and compliance. We do not support the regulation of Overseer inputs or regulation of the exact wording of GFP practices.

PLUG believes that in relation to FEP's they must be flexible to allow for them to be site specific to both the type of farming operation being undertaken and also to the site specific environmental limiting factors around the four main contaminants. With regard to this PLUG suggests that a template for an FEP be as shown below:

Farm Environment Plan

Content

- Description of sub-catchment environmental limiting factors in relation to the four main contaminants: N, P, E Coli & Sediment (e.g. geography, topography, climate etc.)
- Sub-catchment Management Plan.
- Site specific unique environmental limiting factors.
- Results of sub-catchment water quality testing showing main limiting contaminant levels (if available).
- Description of farming operations to be undertaken.
- Environmental Risk Assessment of the total farming operation.
- List of Environmental Controls based on the results of the risk assessment.
- Justification of the controls selected for all risks identified based on a cost benefit analysis of the controls in relation to the risk.
- List of BPO's selected to enable compliance with environmental criteria in relation to specific site and its individual limiting factors.
- Membership of Certified Industry Scheme where applicable, with a description of monitoring and reporting requirements.
- Sub-catchment monitoring and reporting requirements for those individuals outside of Certified Industry Schemes.

We believe that having a template such as that shown above, where the information categories are regulated but the information required under each can be site specific and flexible yet still give the WRC enough information to allow them to carry out their primary functions under the plan.

The use of either CFEP's or CIS's to approve the content of FEP's will still give the surety to WRC that the requirements of PC1 are being complied with.

PLUG is firmly of the belief that this process of FEP's must be driven from the bottom up. To explain this statement further, we recognise that WRC are responsible for the regulatory requirements under their regional planning rules, but that for the proposed plan change to be successfully implemented it must have buy in from all affected parties.

To gain support for the FEP process, it must be flexible enough to enable farmers to produce plans that are specific to each farming operation yet still compliant with the requirements of PC1.

Currently PC1 refers to issues around regulating inputs which in effect under the one size fits all model of PC1 only ends up preventing any flexibility from being built into the process whereas under a bottom up method where the outputs are regulated, flexibility is guaranteed.

Sub-catchments

1. What constitutes a sub-catchment?

Currently there are 74 sub-catchments in the Waikato region covered under PC1. PLUG believes that a sub-catchment needs to have two main things to be approved. Similar land types across all stakeholder properties and all properties must share the same water flow path at the ultimate discharge point from the sub-catchment.

2. How do we expect them to be set up?

PLUG expects that there would either be use of the existing sub-catchment boundaries or where requested by a significant number of primary stakeholders in an area, the setting up of different set of boundaries.
(By Primary Stakeholders we mean the landowners who will be required to take action and also fund those actions)

3. Who will carry out the different functions in relation to the sub-catchments?

The regulatory functions stay with the WRC as required by local government legislation, and we expect that this would include the setting of discharge criteria as well as enforcement where required. PLUG expects that the different operational functions will be carried out by persons elected by the stakeholders within each sub-catchment area (an example of how this may work can be taken from the structure developed as part of the Pomohaka Water Scheme in Otago.)

We have also suggested in our block 2 evidence, that we believe that the auditing function of operational matters directly within each sub-catchment could be devolved to third parties such as industry representative bodies (i.e. Dairy NZ, Beef & Lamb, Hort NZ etc.) although this would need to be negotiated directly by the stakeholders/Levy payers and the representative bodies as it is outside the scope of this hearing panel.

Our reason for this suggestion being that every stakeholder already pays levies to one or other of the representative bodies and to have them carry out the auditing function would prevent duplication of personnel where the representative bodies already visit the stakeholders and have expertise in their representative type of farming operation which would allow them to carry out an audit function with the support of the stakeholders.

Another benefit of using the representative bodies to carry out this auditing function is that it relieves the WRC of the need to greatly increase their staff numbers.

We also expect that with this method of verification that the WRC would audit the representative bodies to ensure that they are carrying out their required auditing functions and that compliance is being achieved with the required standards as set out in PC1.

In support of the system of auditing compliance against FEP's there will also need to be a system of monitoring water quality across each of the sub-catchments to ensure firstly that we have a current test result that can be used as a benchmark against which the WRC can measure whether they are meeting the requirements of the Vision & Strategy i.e. maintaining or improving the water quality.

The monitoring function should remain with the WRC as this is a core part of their regulatory requirements under the Vision & Strategy of the Waikato Settlement Act. The actual function of water sampling and testing may be contracted out to a third party by the WRC but responsibility for this function should remain with WRC at all times.

4. What are the standards that we expect to have set out for each sub-catchment?

PLUG believes that each sub-catchment will require an individual sub-catchment management plan that will set out the criteria for that sub-catchment including any common BPO's/GFP's that may be required for that sub-catchment.

We also firmly believe that for this process to work and for the development of a sub-catchment management plan that is (***S, M, A, R, T,*** *Sustainable, measureable, Achievable, Realistic and Time-bound*) the primary stakeholders must have an equal voice in the development of the plan as they are the experts in that situation.

PLUG believes that the output standards in relation to the four main contaminants (P, E-Coli, Nitrogen & Sediment) would be set by WRC and that they would be the same across the whole region with the method of achieving these and the inputs used being decided by the individual farmers and being overseen by the auditing provisions as set out above.
Given the huge variations in both land types and farming types it is in our opinion impossible to set a one size fits all standard for inputs and that given the reality of this statement the regulating of outputs (i.e. discharge limits etc.) by WRC and the control of inputs by the stakeholders, overseen by a robust audit system and monitoring regime is the only practicable solution to how we achieve an increase in water quality.

5. What happens when an individual farmer does not meet the standards required?

PLUG believes that in the first instance the sub-catchment management committee would approach any farmers not meeting the required standards and request they take action to do so.

If the individual still does not comply with requirements then the sub-catchment management committee could refer the issue to the representative body and request an audit be carried out of that operation with any adverse findings requiring remedial actions to be carried out within a defined time frame and be audited again to prove compliance.

Where the individual still refuses to meet the required standards after the follow-up audit then the representative body would be obliged to report this non-compliance to WRC for them to take whatever enforcement actions they deem to be suitable in each case.

Where an individual continues to require follow-up visits through failure to meet the required standards then they should be required to have a raised level of compliance auditing over a shorter time frame.

6. How do we expect the levels of contaminant discharge to be monitored?

We expect the water quality to be sampled at the final discharge point from the sub-catchment area and if there is a problem with raised contaminant levels where the origin is not readily obvious then the WRC would undertake further sampling up stream until it was able to identify where the raised levels were originating from.

7. Who will do the monitoring?

The monitoring is a statutory function of the WRC although the actual sampling and testing of water quality may contracted out to a third party, by the WRC.

8. How will the management and monitoring of the sub-catchment be funded?

Development of the sub-catchment management plan and ongoing monitoring of the water quality should be funded by the WRC as at present.

The ongoing operational management of the sub-catchment would be funded by the stakeholders of the sub-catchment.

9. How can changes to land use flexibility be included in sub-catchment management systems?

By adopting the process of regulating outputs, requiring FEP's, allowing individual farmers to select the BPO's/GFP's that suit their situation/type of operation and auditing process as set out above, land use flexibility is not constrained in any way other than to meet the environmental discharge standards set out in the PC1 document.

If at any time a decision is made that there is a need for a stricter criteria to meet an increase in water quality then all that is required under this system is for the individual farmers to change their operational methods (BPO's/GFP's) to meet that enhanced standard, without the need for drawn out and expensive rewriting of the planning document. It would just need a change to be made to the criteria for discharge and all other things (i.e. water sampling, auditing, monitoring etc.) would stay the same.