

IN THE ENVIRONMENT COURT
AT AUCKLAND

ENV-2020-AKL-000103

I MUA I TE KOOTI TAIAO O AOTEAROA
TĀMAKI MAKĀURAU

IN THE MATTER of the Resource Management Act 1991

A N D

IN THE MATTER of an appeal pursuant to clause 14(1) of the First
Schedule of the Act

BETWEEN CNI IWI LAND MANAGEMENT LIMITED

Appellant

A N D WAIKATO REGIONAL COUNCIL

Respondent

NOTICE OF PERSON'S WISH TO BE PARTY TO PROCEEDINGS

Section 274 Resource Management Act 1991

29 September 2020



**FEDERATED
FARMERS**
OF NEW ZEALAND

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To: The Registrar
Environment Court
Auckland

Federated Farmers of New Zealand Inc ("**Federated Farmers**") wishes to be a party to the following proceedings:

CNI Iwi Land Management Limited v Waikato Regional Council
ENV-2020-AKL-000103

Federated Farmers made a submission about the subject matter of the proceedings.

Federated Farmers is not a trade competitor for the purposes of section 308C or 308CA of the Resource Management Act 1991.

Federated Farmers is interested in all of the proceedings.

1. Federated Farmers represents farmers in the Waikato and Waipā Rivers Catchment.
2. Federated Farmers has appealed the decision to on Proposed Waikato Regional Council Plan Change 1 – Waikato and Waipā River Catchments ("**PC1**"), as amended by the Hearing Panel, in its entirety, i.e. the decision as it relates to the introduction and all of the objectives, policies, methods, rules, definitions and schedules.
3. Federated Farmers supports sustainable management of resources and the use of regulatory and non-regulatory measures to maintain or enhance water quality, and to restore and protect the health and wellbeing of the Waikato and Waipā Rivers. However, Federated Farmers considers that the regulatory and non-regulatory methods proposed in PC1 do not appropriately give effect to the relevant higher order documents, have not appropriately balanced environmental, economic, social and cultural considerations, and are not the most efficient and effective means of achieving the objective of the plan change.
4. Federated Farmers is interested in all the issues raised by the Appellant.
5. Federated Farmers supports in part and opposes in part the relief sought by the Appellant.

6. Without limiting the generality of the above, an explanation of the issues that Federated Farmers has particular interest in is set out in **Appendix A**.

7. Federated Farmers agrees to participate in mediation or other alternative dispute resolution of the proceedings.



N J Edwards / L F Jeffries

Counsel for Federated Farmers

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APPENDIX A

Provision Appealed	Reasons for Appeal	Relief Sought by Appellant	Support/Oppose	Reason
<p>Objectives</p> <p>Objective 4</p>	<p>The Appellant says the Hearing Panel has expressly restricted the development Tangata Whenua Ancestral Lands by making only land use change for Tangata Whenua Ancestral Lands subject to Te Ture Whaimana in Objective 4(b).</p> <p>The Appellant says this “added restriction” seems contrary to the Hearing Panel’s position in the Decision where the need for specific provision for the development of Tangata Whenua Ancestral Lands is acknowledged. The Appellant considers the Hearing Panel has erred by inappropriately distilling this policy intent into the Decision Version of PC1.</p> <p>The Appellant says that to expressly provide limits on Tangata Whenua Ancestral Lands alone suggests that Tangata Whenua Ancestral Lands require a more restrictive policy than other land. This is conflict with the objective of addressing the historical limits on the development of Tangata Whenua Ancestral Lands and risks creating fresh injustices, particularly for underutilised Tangata Whenua Ancestral Lands.</p>	<p>Amend Objective 4 as follows:</p> <p>b. Any impediments to the flexibility of the use of tangata whenua ancestral lands and land returned via treaty settlements are <u>minimised restricted to those necessary to give effect to Te Ture Whaimana o Te Awa o Waikato; and</u></p>	<p>Oppose</p>	<p>Federated Farmers opposes the relief sought and considers that the plan change ought to adopt a consistent approach across all land types that is effects based as opposed to ownership based.</p> <p>Federated Farmers considers that the plan change should treat all landowners equitably, and that it is not the role of the Council to address matters that relate to Treaty of Waitangi or other grievances through the plan change</p> <p>Further, PC1 is the response from the WRC and the Iwi Co-Governors to restoring and protecting the Awa, as required by Te Ture Whaimana o Te Awa o Waikato / Vision and Strategy for the Waikato River (Te Ture Whaimana).</p> <p>Section 17(3) of the Waikato-Tainui Act requires that persons carrying out functions or exercising powers under the RMA must also have particular regard to Te Ture Whaimana.</p> <p>PC1 must also give effect to Te Ture Whaimana given it is deemed to be part of the Waikato Regional Policy Statement.</p> <p>Section 5(1) of the Waikato-Tainui Act states “<i>the vision and strategy is intended by Parliament to be the primary direction-setting document for the Waikato River and activities within its catchment affecting the Waikato River</i>”.</p>

				<p>In <i>Carter Holt Harvey Ltd et al v Waikato Regional Council</i> [2011] NZEnvC 380 at [100], the Environment Court described applying Te Ture Whaimana in a First Schedule Plan Process as follows:</p> <p><i>“The co-management regime established by the Settlement Act and the River Iwi Act is radically different to what hitherto existed under the Resource Management Act and what currently exists elsewhere in New Zealand. Parliament has accorded great weight and importance to the Vision and Strategy as the primary direction-setting document for the Waikato River catchment.”</i></p> <p>Therefore, Federated Farmers opposes the relief sought by the Appellant on the basis that all provisions in PC1 must give effect to Te Ture Whaimana – including those that relate to Tangata Whenua Ancestral Lands.</p>
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Policies

Policy 10	<p>The Appellant says that Policy 7 of the Notified Version of Plan has been diluted in the Decision Version of PC1 (now Policy 10).</p> <p>The Appellant considers the intent in Policy was to promote a method of allocation of diffuse discharges of nitrogen, phosphorus, sediment and microbial pathogens and, accordingly, move away from a first-in, first-served method of land use in the future. In doing so, the Appellant says that several principles were set out to be considered in any future allocation mechanism, including an allowance for flexibility of</p>	<p>Amend Policy 10 as follows: Prepare for further diffuse discharge reductions and any future management regime (including potentially the allocation of diffuse discharges of contaminants) <u>that will be required by</u> subsequent regional plans by collecting information and undertaking research, including, but not limited to, 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 <u>that will</u> assist in the design of any future management regime.</p>	Oppose	<p>Federated Farmers does not support specifying future allocations and concurs with the Hearing Panel that attempting to predict future plan changes is a fraught business. Any certainty that it provides is misleading.</p> <p>The Hearing Panel said that Policy 7 (as notified) should not purport to foreshadow what future plan changes might say. The Hearing Panel said to do so particularly at the level of specificity in the notified version of Policy 7, is likely to create expectations that may well not be borne out in practice. The Panel said while it understood the desire of participants for certainty, indicating the path forward with no assurance that that will in fact be the case is potentially misleading.</p>
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	<p>Tangata Whenua Ancestral Lands.</p> <p>The Appellant says that the allowance for flexibility of Tangata Whenua Ancestral Lands disappeared from the Policy 10 altogether.</p> <p>The Appellant says that in considering Policy 10 the Panel adopted and relied upon the Block 3 section 42A Report. The Appellant says that based on that report, a minority of submissions opposed Policy 7(b) and no conclusion was reached in favour of its removal. The Appellant considers the Panel reliance on the Block 3 Report is not reflected in the Decision.</p>	<p><u>Any future plan should use this information to consider land suitability which reflects 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.</u></p>		<p>While Federated Farmers considers that further information needs to be collected and that the catchment needs to be better understood, Federated Farmers does not support preparing for future allocation through this plan. Federated Farmers considers that needs to be part of consideration during a community process and in the context of better information and science. It is not appropriate for this plan change to bind future plan changes in that way.</p>
<p>Policy 18</p>	<p>The Appellant says the Hearing Panel has expressly restricted the development Tangata Whenua Ancestral Lands by making only land use change for Tangata Whenua Ancestral Lands subject to Te Ture Whaimana in Objective 4(b).</p> <p>The Appellant says this “added restriction” seems contrary to the Hearing Panel’s position in the Decision where the need for specific provision for the development of Tangata Whenua Ancestral Lands is acknowledged. The Appellant considers the Hearing Panel has erred by inappropriately distilling this policy intent into the Decision Version of PC1.</p>	<p>Amend Policy 18 as follow: For the purposes of considering land use change applications enabling the development of tangata whenua ancestral lands, recognise and provide for:</p> <ul style="list-style-type: none"> a. The relationship of tangata whenua with their ancestral lands; and b. The exercise of kaitiakitanga; and c. The creation of positive economic, social and cultural benefits for tangata whenua now and into the future, in a way that gives effect to Te Ture Whaimana o Te Awa o Waikato. 	<p>Oppose</p>	<p>Federated Farmers refers to the discussion in relation to Objective 4 above.</p> <p>Federated Farmers opposes the relief sought by the Appellant on the basis that all provisions in PC1 must give effect to Te Ture Whaimana – including those that relate to Tangata Whenua Ancestral Lands.</p>

	<p>The Appellant says that to expressly provide limits on Tangata Whenua Ancestral Lands alone suggests that Tangata Whenua Ancestral Lands require a more restrictive policy than other land. This is conflict with the objective of addressing the historical limits on the development of Tangata Whenua Ancestral Lands and risks creating fresh injustices, particularly for underutilised Tangata Whenua Ancestral Lands.</p>			
Rules				
<p>Rule 3.11.4.9 – Non-Complying Activity Rule – Land use change</p>	<p>The Appellant says that as notified, Rule 3.11.5.7 (new Rule 3.11.4.9) required a non-complying land use consent for any change to the existing land use as specified in the rule, that activity status was only until 1 July 2026 (the End Date). The End Date was deleted in the Decision Version of PC1 from Rule 3.11.4.9.</p> <p>The Appellant says that the End Date provided a set timeframe within which the Regional Council would be required commit to establish a new rule (or provisions) for any change to existing land uses. The result being that that non-complying activity rule is retained in a manner that prefers land users on a first-in, first-served basis.</p> <p>The Appellant considers that the End Date remains critical to commit the Regional Council to a more equitable method of</p>	<p>Amend Rule 3.11.4.9 as follows: Notwithstanding any other rule in this Plan, the following changes in the use of land are non-complying activities <u>until 1 July 2026:</u></p>	<p>Oppose</p>	<p>Federated Farmers does not support reinstatement of End Date.</p> <p>Federated Farmers agrees with the section 42A report analysis that given the delays to finalising PC 1, it would seem unrealistic that a new planning regime would be ready for notification by 2026. The Section 42A Officers were concerned that a fixed end date, whether or not closer in time to now, is problematic and may lead to the need for a future plan change, just to remove that date.</p> <p>Federated Farmers considers the End Date is both overly optimistic in terms of developments in the PC1 process and potentially problematic in trying to remove it in the future.</p>

	<p>determining the status of changes in land use.</p> <p>The Appellant notes that is it does not consider the Hearing Panel had scope to remove the End Date, nor does it consider that the deletion of the End Date is justified.</p>			
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