

**BEFORE THE ENVIRONMENT COURT
I MUA I TE KOOTI TAIAO O AOTEAROA**

UNDER the Resource Management Act 1991

IN THE MATTER of an appeal under clause 14 of
Schedule 1 of the
Resource Management Act 1991
against the decision of the
Waikato Regional Council on
Waikato Regional Plan Proposed
Plan Change 1: Waikato and
Waipa River catchments

BETWEEN DAIRYNZ LIMITED

Appellant

A ND

WAIKATO REGIONAL COUNCIL

Respondent

**Notice of Appeal to Environment Court against decision on
proposed plan change 1**

Counsel instructed:

P. Lang, barrister,
Riverbank Chambers,
PO Box 19539, Hamilton 3244
Telephone: 021870660,
Email: p.lang@xtra.co.nz

To the registrar of the Environment Court Auckland:

DairyNZ Ltd (DairyNZ) appeals against the Waikato Regional Council decision on Waikato Regional Plan Proposed Plan Change 1: Waikato and Waipa River catchments (PC1).

Submission

1. DairyNZ made a submission and further submissions on PC 1.
2. DairyNZ is not a trade competitor for the purposes of section 308D of the RMA.

Grounds for Appeal

The parts of the Respondent's decision appealed and the grounds for this appeal are set out in the attached Schedule 1.

Relief sought:

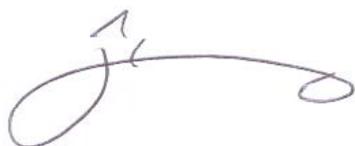
DairyNZ requests that the provisions of PC1 be amended in accordance with Schedule 1 of this Notice of Appeal or by any other amendments that have like effect, and request such consequential amendments to PC1 as are necessary to respond to the matters set out in Schedule 1.

Material attached to this notice of appeal

By way of a decision on applications for waivers dated 14 May 2020, the Environment Court directed:

- a. That the requirement to attach the following documents to any notice of appeal is waived: submissions and/or further submissions, the Decision, and the names and addresses of persons to be served with a copy of the appeal.
- b. That any notice of appeal may be filed electronically to WRC.PC1appeals@justice.govt.nz and must be filed on the Council by email to PC1Appeals@waikatoregion.govt.nz.
- c. That service of the notice of appeal will be effected by the Court uploading any appeals to its website, and the requirement to serve a hard copy on any submitter is waived.

Signed for DairyNZ



Philip Lang, Legal counsel for DairyNZ
8 July 2020

Address for service: PO Box 19539 Hamilton 3244, and by email to p.lang@xtra.co.nz

Provision appealed	Specific grounds of appeal/reasons	Relief sought
Objective 1	Objective 1 refers to “Waikato and Waipā Rivers including springs, lakes and wetlands within their catchments”. Objective 3 refers to the “Waikato and Waipa river catchments”. Objective 4 refers to “the rivers and other water bodies within the Waikato and Waipā catchments”. The inconsistent use of terminology could lead to unintended consequences. There is a concern about whether Objective 1 applies to all <i>tributaries</i> of the Waikato and Waipa river as the list of waterbodies with the catchments omits references to streams and other tributary water ways.	<p>Define the term “water bodies within the Waikato and Waipā River catchments” and use that term consistently across all objectives and other relevant provisions.</p> <p>A definition would be as follows:</p> <p><u><i>The Waikato and Waipā Rivers, including all tributaries, springs, lakes and wetlands and connected water bodies within their surface water catchments</i></u></p>
<p>Objective 2 (Freshwater Objective) Te Whaingā 2 (Te Whaingā Wai Māori)</p> <p>And Table 3.11-1</p> <p>And associated method 3.11.3.4</p>	<p>DairyNZ supported the objective in the proposed PC1 as a first stage toward achieving Te Ture Whaimānā as 10% of the difference between current water quality and long-term water quality goals. DairyNZ acknowledges the decision version extension of PC1 ‘end point’ from 2026 to 10 years after operative, another seven or so years further on than 2026. However, the water quality goal for PC1 has doubled, from 10 % to 20% of the difference.</p> <p>In the life of PC1, measured water quality attribute states will vary for a number of reasons, some of which bear no relation to actions within the control of dairy farmers.</p> <p>DairyNZ is concerned that in future plan effectiveness reviews, any shortfall in meeting water quality attribute states listed in Table 3.11-1 will be seen as dairy farmer non-compliance with regulation, rather than a failure of PC1 provisions.</p> <p>DairyNZ does not oppose the 20% target <i>per se</i> but is concerned that the cost of this revised target has not been considered and that the policies and rule framework required to achieve the target (particularly for phosphorus, E.coli and sediment) has not been put in place in a way that will ensure the target is viable or which distributes the burden appropriately over all contaminant</p>	<p>That Objective 2 and Table 3.11-1 and associated explanatory text be amended to clarify what is expected to be achieved by PC1, including consideration of time lags between what happens on the land and what is measured in the water.</p> <p>Whether Table 3.11-1 should require 20% of the improvement needed to achieve the 80-year targets within 10 years will depend on the nature of the policies and methods (including rules) that result from this appeal. DairyNZ requests that Objective 2 and Table 3.11-1 be revisited iteratively with consideration of other appeal points in relation to the scope and efficacy of policies and methods that apply to likely improvement in sediment, phosphorus and E.coli, and that:</p>

	<p>sources.</p> <p>The amendment to Objective 2 made in the council decision version of PC1 to change the short-term attribute states and the way the objective is worded, so that 'short term numeric water quality values in Table 3.11-1 are met' is inappropriate. Previously the objective referred to 'actions put in place and implemented' in order to acknowledge that changes on the land would take time to be reflected in water quality and would not all be measured within ten years of PC1. This is explained at the beginning of Section 3.11.6</p>	<p>In <u>addition</u> to the above changes, amend Objective 2 so that it reads:</p> <p>Objective 2 (Freshwater Objective) Te Whaingā 2 (Te Whaingā Wai Māori): Progress is made over the life of this Plan towards the restoration and protection of the health and wellbeing of the Waikato and Waipa River catchments in relation to <u>actions put in place and implemented for nitrogen, phosphorus, sediment and microbial pathogens being sufficient to achieve water quality improvements as indicated</u> by the short-term numeric water quality values in Table 3.11-1 being met no later than 10 years after Chapter 3.11 of this Plan is operative.'</p> <p>Section 3.11.6 Retain explanatory text in Section 3.11.6 that clarifies that short-term water quality attribute states will not be used as receiving water limits for the purpose of granting resource consents for Farm Environment Plans or assessing compliance with those consents.</p>
Objective 3	<p>Objective 3 sets out the proposition that the way the plan provides for social and economic wellbeing is by staging the required in-stream improvements (and hence contaminant reductions) at a manageable pace and providing for collective community action. It does so rather than providing a broader acknowledgement of social and economic considerations.</p>	<p>Amend Objective 3 so that it recognises the need to provide for communities' social and economic, spiritual and cultural well-being through means other than solely by way of the two matters listed in the decisions version of the policy. The amended policy should recognise, and provide the foundation for, the many other ways that the provisions of PC 1 take account of those considerations in the design of its policies and methods.</p>

<p>Policy 1</p>	<p>Policies 1-4 set the course of action for managing risk and adverse effects of diffuse contaminants from farming and commercial vegetable production. These policies set the course of action for methods (including rules), and DairyNZ concern is that they are not the most effective and efficient way of achieving PC1 Objectives, particularly Objective 2.</p> <p>Policy 1 is not problematic in terms of the overview of the approach toward farming land use that it sets out. It introduces the concept of “<i>low intensity farming with low risk of diffuse discharge</i>”. DairyNZ’s concern is that other provisions such as Policy 2, 3 and 4 and Rules 3.11.4.3 – 3.11.4.5 inclusively, set thresholds for what is considered low intensity and low risk that in DairyNZ’s view, is not justified by evidence of adverse effects on the environment, and requests that Policies 1-4 are reviewed and amended accordingly.</p> <p>Policy 1 uses an undefined concept of “<i>low intensity farming with low risk of diffuse discharge</i>”. Although that term is not defined, the way it is applied through rules seems to ignore the cumulative impact of many supposedly “low intensity farms”.</p> <p>The policy aims to provide the foundation for permitted activity rules and needs to better target the activities that are genuinely low risk, both individually and cumulatively, to achieve the objectives.</p> <p>Furthermore, the concept of low intensity farming needs to be defined in such a way as to consider contaminant loss risk of all four contaminants, not simply nitrogen. The policy does not acknowledge that risk (and drivers of risk) other than nitrogen leaching potential and stocking rates are relevant to consent status (including matters such as slope, erodibility and management practices).</p>	<p>Amend Policy 1 to state:</p> <p><i>Manage farming land uses to reduce discharges of nitrogen, phosphorus sediment and microbial pathogens, by:</i></p> <p>a.</p> <p>b.</p> <p>c. <i>Enabling, through permitted activity rules, low intensity farming and horticultural activities (not including commercial vegetable production), with low risk (individually and cumulatively) of diffuse discharge of nitrogen, phosphorus, sediment and E. coli contaminants to water bodies, and requiring resource consents for all other activities</i></p> <p>d. ...</p> <p>...</p>
<p>Policy 2/Te Kaupapa Here 2:</p>	<p>DairyNZ concern is that Policy 2 establishes a highly differentiated approach to managing activities that is not based on the adverse effects of those activities. This may lead to PC1 Objectives not being met.</p> <p>Furthermore, Policy 2 differentiates based on, and seeks to manage, diffuse nitrogen discharges; but the primary risk to the Waikato and Waipā rivers (and</p>	<p>Any change to the policy or associated Schedules, should retain the requirement for every property to assess its current environmental footprint, in a way that can be aggregated and compared across different land uses when PC1 is reviewed.</p>

	<p>associated water bodies) is the other contaminants, at least as much (and often more so) than nitrogen. Accordingly, it is important that the policy fully addresses other contaminant loss risk.</p> <p>The policy is incomplete by not applying to commercial vegetable production. It should apply to all farming activities that require a resource consent.</p> <p>Policy 2 is important in terms of effectiveness of PC1. It sets out the course of action for landowners to do their part in achieving water quality Objectives 1 and 2.</p> <p>DairyNZ supports the requirement for all landowners to assess their current environmental footprint, in a way that can be aggregated and compared across different land uses when PC1 is reviewed. Managing nitrogen is an important component of PC1 and through dairy companies, most dairy farmers are familiar with recording and reporting N inputs on their farms</p> <p>Equivalent recording and reporting for on-farm discharges of phosphorus, sediment and E. coli is less familiar to landowners. PC1 has introduced the concept of a threshold using stock units that is presumably intended to differentiate based on diffuse discharge risk for all four contaminants.</p> <p>DairyNZ's concern is that the threshold numbers for stock units that apply to drystock farms in PC1 have not been sufficiently scrutinized in terms of risk and adverse effects.</p> <p>Policy 2 should refer to risk of all diffuse contaminants, in addition to the approach of using N to differentiate between low, moderate and high N leaching risk.</p> <p>DairyNZ supports Overseer and other tools or models that are effective in assessing risk of diffuse discharge of N and may be more efficient to use across</p>	<p>Amend Policy 2 as follows:</p> <ul style="list-style-type: none"> A. The tests of 'reduce to the lowest practicable level' and 'significant reduction' need to be developed further within the policy to provide greater clarity about the matters that will be relevant to consider, and the likely magnitude of the leaching reduction that will be considered appropriate under each test. B. The policy tests in relation to nitrogen loss need to apply to all farms that require a resource consent and not just to dairy farms. C. Opportunity needs to be provided within that rewording for nitrogen reductions to be demonstrated by means other than annual Overseer modelling. For example, purchased nitrogen surplus or Fonterra's Nitrogen Risk Scorecard should be acceptable metrics. D. Some indication of the acceptable levels of N leaching and the extent of required reductions should be included in metricised terms. For example, a proportional reduction range; leaching rate of a prescribed (75th) percentile of farms in the catchment; or agreed level of purchased N surplus. <p>Amend Policy 2 to make it applicable to all farming activities that require a resource consent. In addition to the approach of using N to differentiate between low, moderate and high risk, the concept of a threshold using stock units intended to differentiate based on diffuse discharge risk for all four contaminants could be applied and spelt out in Policy</p>
--	--	--

	<p>many properties.</p> <p>DairyNZ supports the principle that those landowners with highest risk of N loss must reduce N leaving the property.</p> <p>However, Policy 2 in the council decision version of PC1 does not give certainty to plan users and is likely to result in widely differing interpretations and N mitigation requirements consent by consent.</p> <p>Policy 2a) refers to farming activities with a moderate nitrogen leaching loss rate.</p> <p>For farming activity categorized in the moderate Nitrogen Leaching Loss Range (NLLR) the requirement to demonstrate that either the NLLR is already as low as practicable given the current land use or that the NLLR will reduce to the lowest practicable level over an appropriate specified period introduces serious uncertainties.</p> <p>Although this is a policy rather than a rule, the policy will play an important role in assessment of resource consent applications and must be sufficiently certain for that purpose.</p> <p>The terms “as low as practicable” and “given the current land use” could be interpreted in a number of different ways.</p> <p>Policy 2b.– farming activities with a high nitrogen leaching loss rate</p> <p>The requirement to “make significant reductions” to the NLLR or demonstrate why that should not be required or should not be required urgently creates a similar level of uncertainty. While this is a policy rather than a rule, the meaning of “significant reductions” is not clarified elsewhere and is confused further by the four bullet points listing factors to be considered under this policy. It is preferable to define significant in the policy rather than leave it open</p>	<p>2. The threshold should be established in discussion with technical and farm systems experts and should set risk thresholds in terms of managing adverse effects of farming activities.</p>
--	--	--

	to interpretation consent by consent.	
Policy 3	<p>Policy 3 further reflects a differentiated policy approach that favours some activities (in this case commercial vegetable production) potentially, to the disadvantage of others (because an increase in contaminant loss from this sector places an increased burden to achieve reductions from other sectors – and reduces the likelihood that iwi will be able to develop their land).</p> <p>Whereas Policy 2 includes strong and clear policy direction that consent will not generally be granted for an increase in land use intensity, no such policy direction is included for vegetable production.</p> <p>There is no equity of treatment between commercial vegetable production and other intensive farming. Not only are different (and less onerous) policy tests applied, but Policy 3 expressly recognises the contribution commercial vegetable production makes to people and communities. No such recognition is given to other farming activities – despite those other farming activities providing many of the same benefits.</p> <p>The Hearing Panel’s report records acceptance (paragraphs 1603, 1604 and 1617) of evidence that the discharge of nitrogen, P and sediment from new commercial vegetable production would, after mitigation, be not greater (and potentially less) than the pastoral activity displaced. However, the requirement to demonstrate that outcome at the time a consent is sought is not included in Policy 3.</p>	<p>Redraft Policy 3 (and/or make corresponding amendments to the policy framework) to create better alignment between Policy 3 and other policies relating to other (pastoral) land uses and, in particular make the following amendments:</p> <ul style="list-style-type: none"> A. A provision mirroring Policy 2c should be included within Policy 3. B. The specific recognition of the benefits of the activity (Policy 3d) should be included within in Policy 2 (or alternatively deleted from Policy 3) to provide a comparable policy framework. <p>Add to Policy 3 a requirement to demonstrate that, where new land is to be brought into vegetable production, discharges of diffuse contaminants would be no greater than the activity displaced (or, where that cannot be demonstrated, that offsetting of additional contaminants is undertaken on another site within the same sub catchment and preferably the same water body)</p>
Policy 4	<p>Policy 4a sets out what types of farming require quantification of nitrogen leaching rates.</p> <p>While Policy 4a says that all dairy farms must have an FEP with a quantified Nitrogen Leaching Loss Rate for the property, drystock farming does not need to have the same unless its stocking rate is more than 18 stock units per hectare (su/ha). The associated Rule 3.11.4.4 creates even greater differentiation by, despite Policy 4, not requiring <i>any</i> drystock farm to have a Nitrogen Leaching Loss Rate.</p>	<p>Amend Policy 4 to as follows:</p> <ul style="list-style-type: none"> A. Amend sub part a of the policy to provide the foundation for PC 1 to: <ul style="list-style-type: none"> (i) Require the initial assessment of the intensity of farming activities and nitrogen loss risk of farms by reference to either the NLLR or the stocking rate of the individual property;

	<p>DairyNZ considers that if stocking rate is considered an appropriate measure of risk, then that should be applied consistently across all farm systems. Setting aside the fact that Rule 3.11.4.4 does not, in fact, reflect Policy 4, the 18su/ha winter stocking rate threshold (as applied by the associated rules) for drystock farming means that almost all drystock farms will avoid the need for N loss rate quantification.</p> <p>Dairy farms, on the other hand, are subject to this requirement under Policy 4 regardless of their stocking rate.</p> <p>DairyNZ concern is that the risk threshold for all four contaminants has not been appropriately established and set out in Policy 4.</p> <p>Aside from the question of whether an initial Nitrogen Leaching Loss Rate must be calculated in accordance with Schedule B, is the question of whether farms should be required to assess nitrogen loss <i>risk</i> (using a suitable decision support tool) on an on-going (annual) basis.</p> <p>Schedule D1 Part D 2 of PC 1 requires those permitted activities with FEPs to demonstrate that nitrogen loss <i>risk</i> does not increase over time. They may do so using any tool approved by any person that the Waikato Regional Council is satisfied in suitably qualified. This allows tools and methods other than Overseer to be used to assess on-going nitrogen loss risk.</p> <p>The ability to assess and report <i>risk</i> (rather than, necessarily, a leaching metric) should also apply to consented activities that must have an FEP (ie. those consented farms should also be allowed to assess and monitor ongoing nitrogen loss risk using tools other than Overseer leaching estimates). The obligation to annually assess and report nitrogen loss risk, and the ability to do so using tools other than Overseer, should be included within Policy 4.</p> <p>As a separate matter, Policy 4 should, but does not, confirm that all farm systems should be subject to a rigorous, independently prepared FEP. The rules provide that FEPs may be prepared by the farmer themselves (subject to audit). No independent certification is required for the many farms that will have permitted activity status. Only when a resource consent is required is there</p>	<p>(ii) Establish thresholds of Low, Moderate and High risk (using NLLRs and, as an alternative, broadly corresponding stocking rates) for the management of farming activities; and</p> <p>(iii) Require appropriate information to demonstrate the NLLR or an appropriate stocking rate be included within FEPs.</p> <p>B. Include a new subpart in Policy 4 that requires, in respect of <i>all</i> FEPs, the annual monitoring of on-going N loss risk to be undertaken to demonstrate that (at minimum) nitrogen loss risk is not increasing over time. Explicitly enable N loss risk to be assessed using means other than Overseer leaching estimates in the same way as already provided for in Schedule D1 Part D2 in respect of FEPs associated with permitted activities.</p> <p>C. Insert a new subpart of the policy that requires independently certified FEPs for all farms.</p>
--	--	---

	<p>independent rigour applied to the content of an FEP.</p> <p>FEPs are important because they are the primary tool for addressing sediment, phosphorus and E.coli losses from farm systems. They should always be subject to professional, independent certification and the requirement to have an FEP should not be linked solely to the N loss risk of a farming property (whether estimated by Overseer or stocking rate). These simplified proxies for N loss risk from a farm will not necessarily be linked to losses of P, sediment and E.coli. Such an approach risks poor management outcomes for these three other contaminants.</p>	
Policy 10	<p>Council should collect information and undertake research and tool development to enable better, more targeted and more effective management in the future.</p> <p>However, DairyNZ is concerned that any account of contaminant losses is done in a like for like fashion between sectors. There is potential for poor and/or uncomparable data and misleading results.</p>	<p>Amend Policy 10 to read as follows</p> <p><i>Prepare for further diffuse discharge reductions and any future management regime (including potentially the allocation of diffuse discharges of contaminants) in subsequent regional plans by collecting information and undertaking research including, but not limited to, collecting (<u>consistently across all sectors</u>) information about current discharges <u>of all four diffuse contaminants</u>, developing appropriate modelling tools to estimate contaminant discharges, and researching the spatial variability of land use, contaminant losses and the effect of contaminant discharges in different parts of the catchment, to assist in the design of any future management regime</i></p>
Method 3.11.3.3 and 3.11.3.4	<p>As noted in respect of Policy 10, DairyNZ wishes to ensure that any accounting system that is developed by the Regional Council collects and reports information consistently across sectors and across all four contaminants so that results are fairly compared (and differences in accounting methodologies and levels of confidence in data are transparent).</p>	<p>Amend part d of Method 3.11.3.3 as follows.</p> <p>a. <i>An information and accounting system for the diffuse discharges from properties that <u>allows for consistent and comparable reporting across sectors and which</u> supports the management of nitrogen, phosphorus, sediment and microbial pathogens diffuse</i></p>

		<p><i>discharges at a property scale.</i></p> <p><i>Amend Part d of Method 3.11.3.4 as follows:</i></p> <p><i>d. Collate data on the number of land use resource consents issued under the rules of this chapter, the number of Farm Environment Plans completed, compliance with the actions listed in Farm Environment Plans, contaminant loss risk for properties, and nitrogen discharge data reported under Farm Environment Plans <u>(and the methods and metrics used to collect and report that data).</u></i></p>
<p>Rule 3.11.4.3</p>	<p>DairyNZ concern is that provisions for drystock in Rule 3.11.4.3 could result in more diffuse contaminant entering water bodies in the PC1 catchment.</p> <p>In terms of managing N, DairyNZ does not oppose farmers having to establish their NLLR that then determines which consent category applies to the property. However, the threshold in Rule 3.11.4.3 3Ai) that applies to drystock farming does not appear to be based on an equivalent and thorough assessment of risk of adverse effects.</p> <p>DairyNZ requests amendment to an appropriate “low intensity” threshold, should be further researched by experts including farm systems and Overseer experts and based on risk of diffuse discharge of N, P, sediment and E.coli. DairyNZ has not specified how and when the stocking rate should be applied. Instead, if stocking rate is to apply to both dairy and drystock, careful assessment of implications and effectiveness is needed, as well as the threshold values chosen.</p> <p>Rule 3.11.4.3 applies a different permitted activity threshold metric for drystock farming compared to that applying to dairying. A drystock farm operating at up to 18 winter stock units per hectare in winter will not necessarily be more benign in respect of water quality than a low or medium intensity dairy farm</p>	<p>Amend Rule 3.11.4.3 to remove the distinction between dry stock and dairying and require that any farming activity operating as a permitted activity must:</p> <ul style="list-style-type: none"> A. have a Nitrogen Leaching Loss Rate less than or equal to the Low Leaching Loss Rate for the FMU as set out in Table 1 of Schedule B <u>or</u> have an appropriate stocking rate less than [number to be determined]* stock units per hectare B. have an FEP certified by a certified farm planner that demonstrates that the farm will not increase its N losses (or risk of N loss) relative to the previous year. C. be registered with the Council and in conformance with Schedule A provide evidence of the peak and winter stocking rate. D. be subject to annual reporting to Council of

	<p>(which might operate at 18 winter stock units or less intensity). That is because, amongst other things, the two farm systems will likely be undertaken on land of very different inherent risk to water quality. In that regard Rule 3.11.4.3 is not effects-based.</p> <p>At the same time, it is appropriate that genuinely low risk farming activities can operate as permitted activities. A greater proportion of farms could be authorised as permitted activities provided that “low risk” is robustly and consistently assessed across sectors, and that appropriate conditions are imposed, monitored and, where necessary, enforced to reliably manage effects.</p>	<p>an appropriate indicator of Nitrogen loss risk estimated by a certified farm planner using an appropriate decision support tool.</p> <p>*DairyNZ seeks that the stocking rate applied by this rule should be further researched by experts including farm systems and Overseer experts and based on risk of diffuse discharge of N, P, sediment and E.coli</p>
<p>Rule 3.11.4.4</p>	<p>DairyNZ does not consider that the different treatment between drystock and dairy farms is effects based. Recognising the cost and time of assessing and tracking N leaching for farms that have not previously undertaken this, an alternative risk threshold such as stock units could be applied to both dairy and drystock farms.</p> <p>DairyNZ requests that when different ways of assessing risk thresholds are used, they must be carefully assessed to ensure risk is consistently identified and managed across the four contaminants.</p> <p>The current threshold of moderate risk for drystock farms in 4A i) of rule 3.11.4.4 is set at a winter stocking rate of greater than 18 stock units per hectare. DairyNZ requests this is amended to a lower stocking rate that can be shown to be an equivalent level of risk of diffuse discharges of the four contaminants for drystock farms, as the moderate NLLR threshold is for. DairyNZ has not specified how and when the stocking rate should be applied. Instead, if stocking rate is to apply to both dairy and drystock, careful assessment of implications and effectiveness is needed, as well as the threshold values chosen.</p> <p>Similarly, when consents are being assessed under this rule Policy 2 should apply neutrally across both drystock and dairy so that reductions required in N losses are fairly and effectively distributed.</p>	<p>Amend Rule 3.11.4.4 so that any farming activity (whether drystock or dairy) that can demonstrate one or other of the following is a controlled activity:</p> <ul style="list-style-type: none"> A. The farming activity exceeds the stocking rate limits specified in Rule 3.11.4.3 but does not exceed the stocking rate limit of Rule 3.11.4.7; or B. The farming activity has a Nitrogen Leaching Loss Rate that is ‘moderate’ according to Table 1 of Schedule B <p>The following conditions must apply (in addition to the other conditions set out in the decisions version of the rule):</p> <ul style="list-style-type: none"> A. an FEP for the activity must be prepared by a certified farm planner that demonstrates N loss maintenance or reduction as required by Policy 2. B. the stock exclusion standards set out in Schedule C must be complied with.

	<p>Stock exclusion is one of the most basic and effective contaminant loss mitigation measures. If exceptions are routinely granted to drystock farmers, there will be little or no gain to the health of the waterways currently affected by stock access because most dairy farms have already excluded stock. At the regional scale, further reductions in adverse effects from stock access is largely dependent on action on drystock farms.</p> <p>If standard stock exclusion requirements cannot be met, then the matter should be dealt with as a Restricted Discretionary Activity</p> <p>Furthermore, a clear policy is required to guide decision-making on when an exception should be granted and what measures must be put in place to minimise risk.</p> <p>The range and nature of conditions and the broad reservation of control are concerning for controlled activity status for moderate intensity farming.</p> <p>Under rule 3.11.4.4A.6, the Farm Environment Plan must be approved by a certified Farm Environment planner as showing actions and mitigations that demonstrate how the farming activity will achieve the goals and principles set out in part D of Schedule 2.</p> <p>Those goals and principles refer to outcomes such as minimisation of certain effects.</p> <p>That concern is compounded by the reservation of control over the content of a Farm Environment Plan, the actions and timeframes which demonstrate how the farming activity will achieve those goals and principles, and measures to address the effects of contaminant discharges and the duration of the resource consent. The controlled activity status of these activities may be more of an illusion than a reality, given that breadth of control over the conditions of the resource consent.</p> <p>In considering a controlled activity consent application under this rule, the Council will have to consider the provisions of Policy 2, the requirement that the</p>	<p>Amend condition 3 of Rule 3.11.4.4 so that a Nitrogen Leaching Loss Rate is only required where the applicant elects to qualify for the rule through claiming a Moderate Nitrogen Leaching Loss Rate. Otherwise require the supply of a stocking rate.</p> <p>*DairyNZ seeks that the stocking rate applied by this rule should be further researched by experts including farm systems and Overseer experts and based on risk of diffuse discharge of N, P, sediment and E.coli</p>
--	---	---

	NLLR is as low as practicable given the current land use or will be within an appropriate period.	
Rule 3.11.4.5	<p>In contrast to the rules that apply to pastoral farming systems, all existing commercial vegetable production (CVP) (being that area of CVP in the highest year during 2006-2016 period) is a controlled activity regardless of intensity of operation or extent of contaminant loss associated with the activity. That is despite CVP being a high per hectare contributor of sediment, nitrogen and phosphorus.</p> <p>This represents an inequitable approach to managing contaminant loss within the catchment and cannot be described as 'effects-based'. The case for providing CVP with a preferential status in the catchment is not made.</p> <p>The low level of regulatory control over existing CVP is compounded by the applicable FEP requirements under Schedule D2 which are vague and general in nature and do not specifically address the risks associated with CVP. This means that the efficacy of control over CVP is likely to be low relative to the requirements applying to pastoral systems.</p>	Amend Rule 3.11.4.5 to insert appropriate thresholds which ensure that CVP with high contaminant loss are subject to restricted discretionary activity consent in the same way that pastoral farmers with a 'High' contaminant loss would be subject to a restricted discretionary activity consent under DairyNZ's proposed rule 3.11.4.7.
Rule 3.11.4.7	<p>As with all full discretionary activities, the consent application can be declined, and all relevant factors can be considered.</p> <p>As with the controlled activity rule, the Farm Environment Plan must be approved by a certified FE planner as showing actions and mitigations that demonstrate how the farming activity will achieve the goals and principles set out in part D of schedule D2. The specific concerns about that are discussed in further detail below.</p> <p>In assessing a discretionary activity under this rule, the Council will have to consider the directly related policy 2 provisions as well as the schedule D2 provisions.</p> <p>DairyNZ supports farming operations with a very high risk of contaminant loss requiring scrutiny and control through the resource consent process. However, it does not support N leaching loss being the sole metric used to determine farming intensity and risk level. That approach ignores the fact that the</p>	<p>Amend Rule 3.11.4.7 so that any of the following farming activities can demonstrate one or other of the following is a restricted discretionary activity:</p> <ul style="list-style-type: none"> A. the farming activity has a stocking rate that exceeds [number to be determined] stock units per hectare; or B. the farming activity has a Nitrogen Leaching Loss Rate that is 'High' according to Table 1 of Schedule B. <p>Require - in addition to the above - that any farming activity that would otherwise be a permitted or controlled activity except that it cannot meet the stock exclusion standards of Schedule C is a restricted</p>

	<p>catchment faces water quality issues associated with sediment, phosphorus and E.coli that are just as challenging as those associated with nitrogen.</p> <p>DairyNZ has not specified how and when the stocking rate should be applied. Instead, if stocking rate is to apply to both dairy and drystock, careful assessment of implications and effectiveness is needed, as well as the threshold values chosen.</p> <p>Furthermore, given the scope of concern is clearly identifiable around four diffuse contaminants, DairyNZ considers that restricted discretionary activity, rather than full discretionary, status is appropriate. Matters of discretion should be limited to those four diffuse contaminants, the activities and practices that give rise to those contaminant losses and the controls necessary manage those activities and practices.</p>	<p>discretionary activity.</p> <p>Ensure that any FEP required under this rule is prepared by a certified farm planner.</p> <p>* DairyNZ seeks that the stocking rate applied in this rule should be further researched by experts including farm systems and Overseer experts and based on risk of diffuse discharge of N, P, sediment and E.coli</p>
<p>Rule 3.11.4.8</p>	<p>Rule 3.11.4.8 provides for CVP to expand in the catchment to occupy 3,698 ha (including 'extant' consents'). That represents a significant allowance for growth. No other land use has been given a specific right to expand. Although it is a full discretionary consent, the rule represents another example of lack of equitable treatment in the management of rural land uses and associated diffuse discharges across the Waikato and Waipa river catchments.</p> <p>The evidence relied on by the hearing commissioners suggested that (after mitigation) there would be a net <i>improvement</i> in nitrogen loss and in sediment loss with only a 'negligible' change in P. However, the requirement to demonstrate such an improvement (or negligible change in the case of P) relative to the land use displaced is not required to be demonstrated by the rule or by the objectives and policies of PC1.</p> <p>Furthermore, although DairyNZ understands the hectareage specified in Table 1 of the Rule is for both existing and new CVP, the design of the rule (and the absence of any need for existing CVP to gain resource consent before Rule 3.11.4.8 applies) means that the rule could operate to allow far more CVP than is specified in Table 1.</p>	<p>Either:</p> <ul style="list-style-type: none"> A. Amend Rule 3.11.4.8 to be a non-complying rule consistent with the way other farming activities seeking expansion are treated by PC1; or B. Include within the rule and policy framework clear requirements for: <ul style="list-style-type: none"> i. The conversion of land for CVP to occur only where it can be demonstrated that the loss of nitrogen and sediment would be no greater than that of the land use displaced by the conversion and that any increase in phosphorus would be negligible; and

		<p>ii. To the extent to which is not possible on land to be converted, that offsetting of any additional contaminant loss shall apply; and</p> <p>Amend Rule 3.11.4.5 to apply only after all existing CVP has been consented under Rule 3.11.4.4.</p>
Rule 3.11.4.9	<p>DairyNZ supports a non-complying rule to regulate activities that will create significant new and additional diffuse discharges of any of the four targeted contaminants. However, DairyNZ considers that Rule 3.11.4.9 is incomplete because it does not capture significant ‘within system’ intensification or capture those farms that seek to operate without an effective, certified FEP.</p> <p>DairyNZ is concerned that the environment (ie, the health of the Waikato and Waipa rivers) will not benefit from the reductions in contaminant loads made by dairy and others because those benefits will instead be captured by intensifying drystock and expanding CVP systems. Rule 3.11.4.9 does not manage that risk.</p>	<p>Amend Rule 3.11.4.9 so that any of the following activities are non-complying activities (in addition to those set out in the decisions version of the rule):</p> <ul style="list-style-type: none"> A. Any activity that does not have a certified FEP that would otherwise be required to have an FEP under any other rule of PC 1. B. Any activity that increases its N loss from ‘Low’ or ‘Moderate’ to ‘High’. C. Any activity that increases its stocking rate (from that submitted in accordance with any other rule in the plan) to a level above a peak stocking rate of [number to be determined]*. <p>* DairyNZ seeks that the stocking rate applied in this rule should be researched by experts including farm systems and Overseer experts and based on risk of diffuse discharge of N, P, sediment and E.coli</p>
Schedule B	<p>The leaching rates set out in Table 1 are based on the 25th / 30th and 75th percentiles of dairy farm leaching in each FMU. There is no rationale provided for that division.</p> <p>While DairyNZ supports the use of leaching values as thresholds for activity categories (alongside stocking rate limits as an alternative metric) it considers</p>	<p>Amend Table 1 in Schedule B by:</p> <ul style="list-style-type: none"> A. Recalculating the ‘Low’ leaching threshold to be based on the 50th percentile of dairy farm leaching and adding further columns to display the comparable stocking rate

	<p>that the leaching rates are set at levels that do not reflect genuine risk to water quality or the ability to make moderate to low cost leaching reductions.</p> <p>It is also important to note that the leaching values were derived from Overseer modelling using Version 6.3 but as Overseer is updated, the leaching rates will vary and the FMU percentile values in the table will not represent the percentiles originally intended (meaning more or less farms will fall into the permitted activity category for example).</p>	<p>thresholds.</p> <p>B. Recalculating the ‘Moderate’ leaching threshold to capture those farms between the 50th and 75th percentiles of dairy farm leaching and adding further columns to display the comparable stocking rate thresholds.</p> <p>Include a mechanism in Schedule B to ensure that, as Overseer is updated over time, the values in Table 1 are adjusted so that they continue to represent the 50th and 75th percentiles of the dairy leaching as at 2018. This adjustment needs to take place at least until five years after the date that PC 1 becomes operative (being the date by which the rules take effect in the last sub-catchments).</p>
Other	<p>It is not clear whether consents issued under the various Rules of PC 1 will require nitrogen loss to be maintained (in the case of Rule 3.11.4.2, for example) or reduced (in the case of Rule 3.11.4.4, for example) relative to an Overseer estimated benchmark or baseline nitrogen loss risk assessment for the property.</p> <p>It appears that that is at least an option that may be adopted as a consenting practice. It may be that where the Nitrogen Loss Leaching Loss Rate is submitted it is used in that role.</p> <p>Such an approach could lead to unfair and unintended consequences as leaching rates “frozen” would not be comparable to leaching rates estimated by up-dated versions of the Overseer model. That is, achieving the maintenance or reduction relative to the fixed N loss rate condition on consent could become significantly harder (or easier) to achieve as future versions of Overseer are used to estimate contemporary leaching.</p>	<p>Amend PC 1 to ensure that any conditions imposed on resource consents relating to nitrogen loss/risk limits require that either:</p> <ul style="list-style-type: none"> (a) The nitrogen loss/risk limit to be determined by, and compliance assessed by a tool or methodology that does not change over time; or (b) Where Overseer is used to model N leaching loss, that any N leaching loss target is updated as and when a new version of Overseer is released.
Schedule C 7) N fertilizer application	The minimum standard prohibiting nitrogenous fertiliser applied during the months of June and July in any year unless the temperature is tested and found	That number 7. Of Schedule C be amended to read

	<p>to be greater than 10 degrees Celsius within the root zone is not effects-based and does not accord with industry best practice.</p> <p>In Waikato, ryegrass on dairy farms is actively growing in the latter half of July, and any nitrogenous fertiliser applied in that time is expected to be taken up by plants and has low risk of leaching. Adding a requirement for testing soil temperature adds an unnecessary level of complication to the minimum standard.</p> <p>The minimum standard would be more accurate and clearer in its interpretation if the soil temperature was removed and the latter half of July was not included.</p> <p>DairyNZ supports the fertiliser code of practice published by the Fertiliser Association 2013. This document notes that “Applying fertiliser long before the plant will take up the nutrient exposes the nutrient to potential loss. It is especially important to apply highly mobile nutrients at times when plants are actively growing to avoid losses to the environment between application and plant uptake” (page 36)</p> <p>“Application of fertiliser in relation to soil and air temperatures is also important because these conditions affect plant growth and hence nutrient use. For example, applying nitrogen fertiliser to ryegrass when soil temperatures are less than 6°C and falling is likely to be ineffective in stimulating pasture growth because ryegrass stops growing at soil temperatures below 4°C” (page 37)</p>	<p>7. No nitrogenous fertiliser applied during the months of from 1 June and to 15th day of July in any year. unless the temperature is tested and found to be greater than 10 degrees Celsius within the root zone</p>
Schedule D1	<p>The suggestion that FEPs can be prepared by the landowner and need not be certified by a certified farm planner as being compliant with requirements, when combined with permitted activity rules that provide for almost all drystock farming, undermines the credibility and efficacy of PC 1. There is little, if any, assurance that such an approach will result in reductions of diffuse contaminants from the drystock sector.</p> <p>It is not clear what an audit, by a “suitably qualified” person, of a farmer-prepared FEP would assess. To provide confidence that all risks have been fully</p>	<p>Make the following amendments to Schedule D1:</p> <ul style="list-style-type: none"> A. Amend the note at the beginning of Schedule D1 to clarify that all FEPs must be certified by a certified Farm Environment Planner. B. Provide clear and certain direction about who may approve an N loss risk assessment tool and what the Waikato Regional

	<p>identified and that actions put in place consistent with meeting all GFPs are in place, this audit would have to replicate the certified farm plan process. Given this, it would seem more efficient and more certain for farmers, to ensure all FEPs are created to a consistent high standard from the outset.</p> <p>While DairyNZ supports the greater use of permitted activity status, it considers that a high quality FEP is critical to PC 1 in providing for any farming system as a permitted activity.</p> <p>DairyNZ supports the idea (Part D 2) that there should be an annual requirement to demonstrate that N loss/N loss risk has not increased over the previous years and, in particular, that this may be demonstrated by a range of potential tools (i.e., that this is not limited to Overseer but could include tools such as Fonterra’s Nitrogen Risk Scorecard). However, the section is not clearly expressed and is open to various interpretations. There is lack of clarity as to who may approve such tools and how the Waikato Regional Council will determine who is suitably qualified to undertake such approval.</p> <p>While Rule 3.11.4.3 condition 6 requires compliance with Schedule D1 (Part D), the requirement of Part D 2 as it relates to the matter of maintaining N loss at or below the level of the previous year, is not clearly expressed as a minimum standard.</p> <p>Uncertainty is introduced by Part E 2, which implies that a material increase in intensity is allowed as a permitted activity, albeit it will trigger a review of the FEP. That seems to contradict Part D 2 which suggests that no increase in N is permissible.</p> <p>Compliance with Part D 8 will require a significant investment in infrastructure for many farmers. The financing and building of that infrastructure cannot occur instantly. This issue is similar to the requirements for stock exclusion and yet the stock exclusion provisions allow farmers two years after the FEP is prepared to have exclusion fences in place. No such transition period is provided in this Part for effluent infrastructure. It should be.</p>	<p>Council’s role is in that process.</p> <p>C. Amend Part D 2 so that it is clear that:</p> <ul style="list-style-type: none"> • The whole farm risk assessment referred to relates to N loss • A minimum standard is that N loss/loss risk is not higher than the previous year • The information demonstrating that N loss/loss risk has not increased from the previous year is to be retained and provided to the Waikato Regional Council • The model or tool must be used by a suitably qualified person <p>D. Amend Part D 8 to provide for (at least) a two-year transition period within which farmers can make the infrastructural investment required to comply.</p> <p>E. Amend Part D 10 by adding the following</p> <p style="margin-left: 20px;"><i>b. <u>Except as provided in c below</u>, information described in a) above is provided to the Waikato Regional Council on request</i></p> <p style="margin-left: 20px;"><i>c. <u>Any material increase in stocking rate, area of cultivation, area under irrigation or change to winter grazing practices shall be reported to the Waikato Regional Council.</u></i></p> <p>F. Amend Part E by either deleting item b or</p>
--	---	--

		<p>by making the following change:</p> <p><i>An FEP shall also be reviewed in the event of any material increase in intensity of farming <u>stocking rate, area of cultivation, area under irrigation or change to winter grazing practices.</u></i></p>
<p>Schedule D</p>	<p>Part D of schedule D2</p> <p>The goals and principles in this part of schedule D2 identify outcomes that are typically described using words such as “minimise the loss of contaminants that potentially affect water quality”, “minimise nutrient losses to water”, “achieves the nutrient loss reductions required in policy 2” and “minimise losses of nitrogen, phosphorous, sediment and microbial pathogens to waterways”.</p> <p>Those terms can be interpreted to mean a range of things. This terminology creates a serious risk that the controlled activity and discretionary activity farming consents must ensure the achievement of the absolute minimum possible loss of those contaminants to water, and demonstrate, as a certainty, the outcomes that are referred to in Policy 2 as described earlier in this letter.</p> <p>Even if the consent authority wishes to implement those provisions in a practical and achievable way, any opponents of a pragmatic approach could find substantial support from the combination of provisions in Policy 2, the consent rules and part D2 of schedule D. The uncertainty about the meaning of the some of the terms used is a significant issue on its own, but the potential requirement to achieve an absolute minimization of contaminant discharges, regardless of consequences, could be used in an unintended way to interpret and implement Policy 2.</p>	<p>Delete the word minimise where it appears in Schedule D2.</p> <p>Replace the goals and principles of Schedule D2 with the well-known Industry Agreed Good Farming Practices (GFP), complemented as necessary with additional detail from the associated GFP guidelines and other specific matters as may be relevant to the Waikato context.</p> <p>Provide clarity over the requirement that will apply to on-going monitoring and reporting of nitrogen loss risk. This should include provision for use of alternative (to Overseer) risk estimation tools for any farming activity.</p>