

**BEFORE THE ENVIRONMENT COURT
AT AUCKLAND
I MUA I TE KOOTI TAIAO O AOTEAROA
TĀMAKI MAKĀURAU**

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IN THE MATTER of the Resource Management Act 1991

AND

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

BETWEEN **BEEF+LAMB NEW ZEALAND LIMITED**

Appellant

AND **WAIKATO REGIONAL COUNCIL**

Respondent

**NOTICE OF APPEAL TO ENVIRONMENT COURT AGAINST
DECISION ON PROPOSED PLAN CHANGE**

FLETCHER VAUTIER MOORE
LAWYERS
PO BOX 3029
RICHMOND 7050

Solicitor: CP Thomsen & CH
Luisetti
Telephone: (03) 543 8301
Email: cthomsen@fvm.co.nz
cluisetti@fvm.co.nz

**NOTICE OF APPEAL TO ENVIRONMENT COURT AGAINST
DECISION ON PROPOSED PLAN CHANGE**

TO The Registrar
Environment Court
Auckland

1. Beef+Lamb New Zealand Limited (B+LNZ) appeal against part of a decision of the Waikato Regional Council on the following proposed plan change:

Proposed Plan Change 1 and Variation 1 to the Waikato Regional Plan.

2. The Appellant made submissions and further submissions on Proposed Plan Change 1 and Variation 1 to the Waikato Regional Plan (together PC1).
3. The Appellant is not a trade competitor for the purposes of s 308D Resource Management Act 1991.
4. The Appellant received notice of the decision on or about 22 April 2020.
5. The decision was made by the Waikato Regional Council.
6. The parts of the decision that the Appellant is appealing include those identified below together with all necessary consequential amendments to those parts of PC1 necessary to grant the relief sought:
 - (a) Policy / te kaupapa here 1;
 - (b) Policy / te kaupapa here 4;
 - (c) Policy / te kaupapa here 5;
 - (d) Policy / te kaupapa here 16, rule 3.11.4.6 – farming in Whangamarino wetland catchment;

- (e) Schedule C minimum farming standards:
 - (i) 1.b – stock exclusion if greater than 18 stock units in paddock adjoining water body on slope greater than 15 degrees;
 - (ii) 5 – exclusion of stock from intermittently flowing water bodies;
 - (iii) 6 – application rate for nitrogenous fertiliser;
 - (iv) 8 and 9 – winter grazing of forage crops on LUC class 6e, 7 or 8 land, live weight and age limits.
- (f) Schedule D1 requirements for Farm Environment Plans for farming as a permitted activity:
 - (i) Part D standard 1.d – N fertiliser application rate standard;
 - (ii) Part D standard 4 – application rate for nitrogenous fertiliser;
 - (iii) Part D standard 5.a and 5.c – winter grazing of forage crops on LUC class 6e, 7 or 8 land, live weight and age limits and ungrazed vegetated setback.

7. The general reasons for the Appeal are that the parts of the decision being appealed:
- (a) Will not promote the sustainable management of resources and is contrary to the relevant provisions of part 2 RMA.
 - (b) Do not give effect to Te Ture Whaimana o Te Awa o Waikato - The Vision and Strategy for the Waikato River.
 - (c) Do not give effect to relevant national policy statements including, inter alia, the National Policy Statement for Freshwater Management.

- (d) Do not give effect to the Waikato Regional Policy Statement: Te Tauākī Kaupapahere Te-Rohe O Waikato.
 - (e) Do not represent the most appropriate way to achieve the objectives of the Proposed Plan.
 - (f) Will have significant economic and social costs for the community, in particular the sheep and beef sector.
 - (g) Do not provide for the efficient use and development of natural and physical resources.
 - (h) The 32AA analysis was insufficient in respect of the matters B+LNZ has appealed.
 - (i) The Hearing Panel's Recommendation Report (Report) placed insufficient weight on ecological health as a value the Vision and Strategy seeks to achieve, alongside mahinga kai and swimmability. The Report therefore erred by focussing too narrowly on water quality.
 - (j) The Report recognised the notified PC1 was inequitable in its imposition of "grandparenting" via the Nitrogen Reference Point. Given these inequities it correctly found it was, *inter alia*, more efficient in a s 32 sense to amend PC1 by putting in place a nitrogen leaching rate table in Schedule B providing a proxy for risk, enabling permitted low intensity farming activities where there is a low risk for nitrogen leaching, enabling sub-catchment management and generally requiring the use of Farm Environment Plans to manage diffuse discharges and to improve farming practices. PC1 must be consistent this key finding.
8. Without limiting the generality of the grounds pleaded in the preceding paragraph the specific reasons for the appeal and the relief sought are as follows:

Policy 1

- (a) The Report correctly recognised the appropriateness of permitted activities for low intensity farming activities. The permitted activity rule (rule 3.11.4.3) implements what the Report described as the *low risk policy*, policy 1.
- (b) Policy 1 requires clearer internal links to the requirement to produce Farm Environment Plans in a timely fashion to contribute to the achievement of the short-term numeric water quality values in Table 3.11-1 and objective 2.
- (c) Table 3.11-1 reflects the reality at the sub-catchment level that not all sub-catchments require improvement in water quality to achieve the attribute states and to restore and protect the health and well-being of the Waikato River. Table 3.11-2 correctly directs focus for the reduction of contaminants to those that should be prioritised at a sub-catchment level. Therefore, reference to managing farming land uses to reduce diffuse discharges in all circumstances is inaccurate.

Relief sought

Amend policy 1 as follows

Manage farming land uses ~~to reduce diffuse discharges of nitrogen, phosphorus, sediment and microbial pathogens~~, by:

- a. Requiring a general improvement in farming practice through the timely implementation of Farm Environment Plans to reduce diffuse discharges of those contaminants; and
- b. Focusing priority action on those farming practices that reduce those contaminant(s) set out in Table 3.11-2; and
- c. Enabling, through permitted activity rules, low intensity farming and horticultural activities (not including commercial vegetable production), with low risk of diffuse discharge of contaminants to water bodies, and requiring resource consents for all other activities; and

- d. Requiring a greater level of scrutiny, by resource consents, of those farming activities (including commercial vegetable production) that diffusely discharge into sub-catchments that include riverine or peat lakes identified on Map 3.11-1 in accordance with Policy 15; ~~and.~~
- ~~e. Requiring the timely implementation of Farm Environment Plans to reduce diffuse discharges of those contaminants.~~

Policy 4

- (d) Management of diffuse discharges under policy 4.c is already contemplated by policies 4.d (including in respect of Table 3.11-1) and 4.e and therefore reference to reduction of diffuse discharges is unnecessary and inaccurate.

Relief sought

Amend policy 4 as follows

Where a Farm Environment Plan is required to assist in achieving Policies 1, 2 and 3, it shall be prepared, monitored and reviewed as follows:

...

- c. Take a risk-based approach to managing land use, including adaptive management, ~~to reduce diffuse discharges of nitrogen, phosphorus, sediment and microbial pathogens;~~ and

Policy 5

- (e) Table 3.11-1 reflects the reality at the sub-catchment level that not all sub-catchments require improvement in water quality to achieve the attribute states and to restore and protect the health and well-being of the Waikato River.
- (f) Table 3.11-1 should be specifically referred to in policy 5 to reflect the relationship between offsets and compensation and the outcomes PC1 seeks.

Relief sought

Amend policy 5 as follows

Provide for offsetting and compensation that better achieves the objectives of Te Ture Whaimana o Te Awa o Waikato where:

- a. In the relevant ~~There is an overall reduction in the relevant sub-catchment(s) of the diffuse discharges~~ of each of nitrogen, phosphorus, sediment and microbial pathogens from the property(s) are being managed to achieve the short-term outcomes in Table 3.11-1 ; or
- b. Where required there is a sufficient reduction in the diffuse discharge of nitrogen, phosphorus, sediment and/or microbial pathogens from the property(s) so that the positive benefits to restoration and protection of the health and wellbeing of the Waikato and Waipā Rivers demonstrably exceed the adverse effects from any increases in the diffuse discharge of any of those contaminants, provided any increases are not of a contaminant that Table 3.11-2 identifies as a priority for reduction in that sub-catchment.

Policy 16 & Rule 3.11.4.6

- (g) Policy 16 and rule 3.11.4.6 provide for the restoration and protection of the Whangamarino Wetland and farming activities.
- (h) The Whangamarino Wetland is of local and international significance and requires recognition in PC1. B+LNZ agrees with the finding that the Wetland is outstanding as recognised in objective 5 (e.g. as recorded at paragraph 1589).
- (i) The Report correctly recognised the limitations to PC1, on its own, providing for the restoration and protection of the Whangamarino Wetland (paragraph 1427).
- (j) The Report correctly found favour with the proposition *in principle* that farming activities with low levels of environmental effects should be *enabled* (e.g. paragraph 1067).

- (k) The Report erred in failing to recognise that the principles applying to the relative contributions of contaminants from different types of farming activities (e.g. recognised at paragraph 644 in the context of the findings as to the use of the Nitrogen Reference Point) applied to the Whangamarino Wetland. Therefore, a permitted activity rule for low intensity farming activities is appropriate for the Whangamarino Wetland Catchment.

Relief sought

Amend policy 16 and insert new permitted activity rule to provide for the use of land for farming, including associated diffuse discharges that may result in contaminants entering water, as a permitted activity within the Whangamarino Wetland Catchment.

Schedule C standard 1.b, standard 5 & Exclusions

- (l) Schedule C provides minimum farming standards for permitted farming activities and includes provisions relating to stock exclusion from water bodies.

Exclusion from water bodies – standards 1 & 5

- (m) Farm environment plans and minimum standards are more certain and enforceable than references to *good farming practice*.
- (n) B+LNZ support the use of minimum standards for the high risk activities set out in Schedule C to set the baseline for *operational practice* pending the development of Farm Environment Plans (FEPs).
- (o) The Report accepted the need to recognise the particular circumstances of the drystock sector (paragraph 1734), particularly those of extensive hill country farming operations that typically have extensive water bodies on their farms (paragraph 1664), including by not requiring fencing of water bodies on slopes greater than 15 degrees and by excluding sheep from the applicable standards.

- (p) Policy 2.e recognises that the effects of farmed animals (excluding sheep) not being excluded from some water bodies can be mitigated through farming with FEPs.
- (q) The Report failed to recognise and provide for the circumstances described above in the minimum farming standards and FEPs because Schedule C standard 1.b and standard 5 will have a disproportionate effect on the red meat sector.

Use of temporary, permanent or virtual fences – standard 1

- (r) Standard 2 recognises the use of temporary, permanent or virtual fences. Standard 1 should be amended to make it clear that the use of temporary, permanent or virtual fences are options to exclude animals from water bodies under that standard.

Exclusion from intermittent rivers – standard 5

- (s) PC1 provides for intermittent rivers to be subject to the minimum farming standards in Schedule C.
- (t) The Report determined that a new definition could not be provided for *river* or *intermittent river* to avoid *potential difficulties* with the scope of PC1 (paragraph 1678).
- (u) The inclusion of a farming standard in respect of rivers that flow intermittently will have a disproportionate effect on the red meat sector, particularly in the hill country that has not been, or has insufficiently been, considered in a s 32 and substantive sense.
- (v) It was unlawful and inappropriate to, effectively, amend a defined term or define a term in a plan through a condition/standard required to comply with a permitted activity or other activity status.
- (w) For the same reasons as pleaded above, the Report failed to recognise and provide for the red meat sector's

circumstances in the inclusion of *intermittent rivers* at standard 5.

Width of active bed – standard 5

- (x) Adverse effects on small water bodies are principally from overland flow paths that cannot be mitigated through fencing.
- (y) The cost of fencing small water bodies with active beds of less than one metre is disproportionate to the contribution it would make to the management of contaminants.

Exclusions from stock exclusion requirements – deer or pig wallows

- (z) *Prima facie* wallows should not be connected to water bodies by overland flow channels. However, wallows on flat land with no discernible flow path to a water body could be prone to flooding in a storm event leading to overland flow to that water body. It is therefore appropriate to only exclude overland pathways that are in identifiable channels.

Relief sought

Amend the standards as follows:

1. The water bodies on land:
 - a. with a slope of up to 15 degrees; ~~or~~
 - b. ~~with a slope over 15 degrees where in any paddock adjoining the water body, the number of stock units exceeds 18 per grazed hectare at any time;~~
must be fenced, with a temporary, permanent or virtual fence, to exclude farmed cattle, horses, deer and pigs, unless those animals are prevented from entering the bed of the water body by a stock-proof natural or constructed barrier formed by topography or vegetation.
- ...
5. Water bodies from which cattle, horses, deer and pigs must be excluded:

- a. ~~The bed of a A~~ river (including any spring, stream and modified river or stream), or artificial watercourse that has an active bed greater than 1m wide and is permanently ~~or intermittently~~ flowing; and
- b. The bed of any lake; and
- c. Any wetland, including a constructed wetland, greater than 50m².

...

Exclusions:

The following situations are excluded from Clauses 1, 2 and 3:

- I. Where the entry onto or passing across the bed of the water body is by horses that are being ridden or led.
- II. Deer or pig wallows in constructed ponds or constructed wetlands that are located at least 10 metres away from the bed of a water body and which are not connected by an overland flow channel ~~path~~ to a water body.

Schedule C standard 6 and D1 part D standard 1.d

- (aa) Schedule C provides minimum farming standards for permitted farming activities and includes provisions relating to fertiliser application.
- (bb) FEPs are a key implementation tool for PC1. Schedule D1 sets out the requirements for FEPs for permitted farming activities and includes standards for fertiliser application.
- (cc) The Report provides for an application rate for nitrogenous fertiliser of no more than 30kgN/ha per dressing on the basis that it will require farmers to consider the efficiency of fertiliser management practices (paragraph 1697), which is effectively an input standard.
- (dd) It is inappropriate to include an additional input standard because PC1 already provides for the management of N and its derivatives as output standards in:
 - (i) Schedule B Table 1 for nitrogen leaching loss rates;

- (ii) Stock units as a proxy for intensity and risk, specifically of diffuse discharges.
- (ee) Losses from nitrogenous fertilisers vary based on multiple factors, including the release rate (solubility), climate and soil conditions. A single numerical standard fails to account for those variables.
- (ff) The application of nitrogenous fertilisers is adequately managed through standards in Schedule D1 part D 1.c, 1.e, 1.f and 2.b. Therefore standards 6 and 1.d are unnecessary.

Relief sought

Delete the standards as follows:

Schedule C

...

~~6. Nitrogenous fertiliser is not applied at rates greater than 30kgN/ha per dressing~~

Schedule D1, Part D 1. Nutrient Management

...

~~d. Nitrogen fertiliser application rates to pasture are no greater than 30kg of N per hectare per dressing~~

Schedule C standard 8 & 9 and Schedule D1 part D standard 4.b, 5.a & 5.c

- (gg) Schedule C provides minimum farming standards for permitted farming activities and includes provisions relating to winter grazing.
- (hh) Schedule D1 sets out the requirements for FEPs for permitted farming activities and includes standards that manage risk through restrictions on the liveweight and age of stock of certain LUC classes of land.

- (ii) Schedule D1 also includes standards for un-grazed vegetated buffers from water bodies.

Liveweight and Age Restriction on LUC Class 6e, 7 or 8 Land

- (jj) The risks the liveweight and age restriction standards are addressing are managed through other provisions of the FEPs that focus on the identification and management of critical source and erosion prone areas e.g. Schedule D1 part D standard 4.a and 4.c.
- (kk) The identification of age, weight and number of cattle do not address the risk of those animals being held on land that is vulnerable and are unnecessary.
- (ll) The standards are unduly restrictive and will have a significant effect on the red meat sector in Waikato, which has cattle as an integral part of farming systems, particularly where a farm has large area of LUC Class 6 land. Managing the risk of larger animals on more vulnerable landscapes is more appropriately addressed through the intensity of the stocking rate and management of erosion prone land and critical source areas.

Un-grazed Vegetated Buffer

- (mm) The Report found that there are no *clear-cut quantitative relationships* for setback distances for planning purposes due to a lack of consensus in the scientific literature (see paragraphs 1654 and 1658).
- (nn) A 10 metre un-grazed vegetated setback is not required to manage erosion and other risks when grazing winter forage crops. Five metres is the appropriate set back.

Relief sought

Redraft the standards as follows:

Amend Schedule C 8 and delete 9

8. When any land adjacent to a Clause 5 waterbody is being utilised for the grazing of a winter forage crop (from 1 June to 1 September) or as a sacrifice paddock, an un-grazed vegetated buffer at least 40 5 metres in width measured from the edge of the waterbody shall be maintained.
- ~~9. No cattle older than 2 years or greater than 400kg lwt are grazed on forage crops on LUC class 6e, 7 or 8 land from 1 June to 1 September.~~

Delete Schedule D1 part D 4.b and 5.a and amend 5.b

4. Land and soil

...

- ~~b. On land of LUC class 6e, 7 or 8 no cattle older than 2 years or greater than 400kg lwt are grazed from 1 June to 1 September.~~

5. Winter grazing of forage crops

- ~~a. No cattle older than 2 years or greater than 400kg lwt are grazed on forage crops on LUC class 6e, 7 or 8 land from 1 June to 1 September.~~
- b. No winter grazing of forage crops occurs on LUC Class 6e, 7 or 8 land from 1 June to 1 September where the number of cattle grazed exceeds 30 in an individually-fenced area.

Amend Schedule D1 part D 5.a

- c. When any land adjacent to a Schedule C Clause 5 waterbody is being utilised for the grazing of a winter forage crop (from 1 June to 1 September) or as a sacrifice paddock, an un-grazed vegetated buffer at least 40 5 metres from the edge of the waterbody shall be maintained.

Schedule D2

- (oo) Schedule D2 sets out the requirements for FEPs for farming activities that need resource consent.

- (pp) While the method in Schedule D2 differs from that for permitted farming activities under Schedule D1, as far as possible the two schedules should be consistent.

Relief sought

Make any incidental amendments to Schedule D2 arising from the relief sought above to ensure consistency and fairness between permitted farming and farming that requires a resource consent.

9. The Appellant seeks the following further general relief:
- (a) That the appeal be allowed.
 - (b) Such other consequential or alternative relief by way of amendments to the provisions of PC1 that address the grounds pleaded above;
 - (c) Costs.
10. In accordance with the Environment Court's directions in *Re Wairakei Pastoral Ltd* [2020] NZEnvC 63 the following documents have not been attached to this notice of appeal:
- (a) A copy of the Appellant's submission and further submission;
 - (b) A copy of the relevant decision; and
 - (c) A list of the names and addresses of persons to be served with a copy of this notice.



CP Thomsen
Counsel for the Appellant
8 July 2020

This notice of appeal was filed by **CHRISTOPHER PAUL THOMSEN**, solicitor for the Appellant of the firm Fletcher Vautier Moore. The address for service of the above-named Appellant is at the offices of Fletcher Vautier Moore, Solicitors, 265A Queen Street, Richmond, Nelson.

Documents for service on the Appellant may be:

- (a) Posted to the solicitor at Fletcher Vautier Moore, Solicitors, P O Box 3029, Richmond, Nelson; or
- (b) Left for the solicitor at a document exchange for direction to DX WC71017, Richmond, Nelson; or
- (c) Transmitted to the solicitor by facsimile to (03) 543 8302 provided original documents are then posted to the solicitor; or
- (e) Sent by email to cthomsen@fvm.co.nz and cluisetti@fvm.co.nz provided original documents are then posted to the solicitor.

Advice to recipients of copy of notice of appeal

How to become party to proceedings

You may be a party to the appeal if you made a submission or a further submission on the matter of this appeal.

To become a party to the appeal, you must,—

- within 15 working days after the period for lodging a notice of appeal ends, lodge a notice of your wish to be a party to the proceedings (in form 33) with the Environment Court and serve copies of your notice on the relevant local authority and the appellant; and
- within 20 working days after the period for lodging a notice of appeal ends, serve copies of your notice on all other parties.

Your right to be a party to the proceedings in the court may be limited by the trade competition provisions in section 274(1) and Part 11A of the Resource Management Act 1991.

You may apply to the Environment Court under section 281 of the Resource Management Act 1991 for a waiver of the above timing or service requirements (see form 38).

How to obtain copies of documents relating to appeal

The copy of this notice served on you does not attach a copy of the Appellant's submission, further submission, decision appealed or list of names and addresses of persons to be served with a copy of this notice. These documents may be obtained, on request from the Appellant at its address for service.

Advice

If you have any questions about this notice, contact the Environment Court in Auckland, Wellington, or Christchurch.