

**BEFORE THE ENVIRONMENT COURT
AUCKLAND**

ENV – 2020 – AKL -

**I MUA I TE KOOTI TAIAO O AOTEAROA
I TE TĀMAKI MAKĀURAU ROHE**

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 Proposed Plan Change 1 to the Waikato Regional Plan

BETWEEN **FONTERRA CO-OPERATIVE GROUP LTD**
Appellant

AND **WAIKATO REGIONAL COUNCIL**
Respondent

NOTICE OF APPEAL

6 JULY 2020

**Russell
McAugh**

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To: The Registrar
 Environment Court
 AUCKLAND

FONTERRA CO-OPERATIVE GROUP LTD ("Fonterra") appeals against the decision of the Waikato Regional Council ("**Council**") on Proposed Plan Change 1 to the Waikato Regional Plan ("**PC 1**").

Submission

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

Decision by Council

3. The Council's decision ("**Decision**") was formally notified on 22 April 2020.
4. By its decision on an application for an extension of time to file appeals, the Environment Court directed at [87] that any appeal by certain parties, including Fonterra, must be filed within 50 working days of 28 April 2020 ([2020] NZEnvC 051, at [B]).

Grounds for Appeal

General grounds of appeal

5. Fonterra strongly supports Te Ture Whaimana o Te Awa o Waikato and the need to restore and protect the water bodies within the PC 1 catchments within a generation.
6. Fonterra strongly supports PC 1 as being an important first step towards achieving that ultimate objective, however Fonterra does not consider that the provisions in their current form will successfully achieve that first step.
7. Fonterra says that any failure of PC 1 to achieve its objectives will not only risk failing to achieve the ultimate objective, but it will require a future planning response that must make up for the ground lost because of PC 1's failure. Any such future response will need to be considerably more stringent and it will have a substantially greater impact on the social and economic wellbeing of the farming communities within the Waikato Region.
8. At a general level, Fonterra opposes those parts of the Decision and the PC 1 provisions described in Schedule 1 because those provisions:

- (a) Do not explicitly include *all tributaries* of the Waikato and Waipā Rivers.¹ These tributaries must be managed so as to ensure the efficacy of the rules and to ensure that the rules are applied consistently across the whole of the catchment.
- (b) Mean that 20% of the required improvement towards the 80-year water quality state must be made in 10 years from the date PC 1 becomes operative, as compared to the 10% improvement in 10 years that was in the notified version. Fonterra supports Te Ture Whaimana o Te Awa o Waikato and Fonterra does not oppose the increased rate of improvement *per se*, but rather Fonterra opposes the increased rate of improvement because that rate of improvement cannot be met by the provisions as they are now written (refer (c) below), because the social and economic costs have not been assessed, and because the costs fall inequitably on only one sector (ie dairy).
- (c) Will not achieve Te Ture Whaimana o Te Awa o Waikato or the objectives of PC 1 because:
- (i) The stringency and enforceability of methods is not uniform across all four contaminants or across all land use activities. While nitrogen is managed by enforceable rules (particularly where it is diffusely discharged from the dairy sector), the rules applied to the management of other contaminant discharges are much less rigorous and will be difficult to monitor and enforce. This is despite recognition by the Hearing Panel that nitrogen is not the contaminant of greatest concern and despite the need for reductions in the diffuse discharge of those other contaminants at the same, or greater, rates as reductions in nitrogen if the 10 year water quality targets are to be met;
 - (ii) the different treatment of rural land uses and their associated diffuse discharges, as between dairy and non-dairy, will not be efficient or effective because they:
 - (aa) are not effects-based;
 - (bb) allow for increases in diffuse contaminant discharges from some farming sectors (either from individual farms or cumulatively from the sector);

¹ Decision [793], which agreed that Objective 1 should refer to a range of waterbodies within the Waikato and Waipa catchments; Refer Objective 1 *et al*, and definitions: Schedule 1, line 1.

- (cc) apply thresholds to assess and define the intensity and risk of farming activities that are not consistent or comparable across farming sectors; and
 - (dd) do not require a consistent level of scrutiny over the preparation of farm environment plans ("**FEPS**") across all farming sectors.
- (d) Do not provide a clear or consistent consenting framework and will present high risk of implementation failure because:
- (i) the policy tests that apply to consent applications are not applied consistently across all farming sectors and are too imprecise and general in nature;
 - (ii) they do not address the question of whether diffuse nitrogen discharge limits imposed by way of resource consent conditions will be recalculated when the model (eg, Overseer) used to assess compliance with those limits is updated.

Specific grounds of appeal and provisions appealed

9. Specific grounds of appeal, and the provisions appealed, are described in Schedule 1.

Relief sought

10. Fonterra respectfully requests:
- (a) That the provisions of PC 1 be amended as set out in Schedule 1 or by words to like effect, but that otherwise the provisions are supported and Fonterra seeks that they be confirmed.
 - (b) That any other consequential amendments be made to the provisions of PC 1 or to any other provisions, including any necessary amendments to any planning maps, to respond to the concerns set out in this notice of appeal.

Material attached to this notice of appeal

11. 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.

FONTERRA CO-OPERATIVE GROUP LTD by its counsel Bal Matheson:



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TO:	The Registrar, Environment Court
AND TO:	Waikato Regional Council

Advice to recipients of copy of notice of appeal

How to become a party to proceedings

1. If you wish to be a party to the appeal, as per the requirements in Environment Court decision [2020] NZEnvC 063, by 29 September 2020 you must:
 - (a) lodge a notice of your wish to be a party to the proceedings (in form 33) with the Environment Court by emailing WRC.PC1appeals@justice.govt.nz, or you may file a single hard copy with the Environment Court's Auckland Registry; and
 - (b) serve copies of your notice on Fonterra at the address for service above and on the Waikato Regional Council on PC1Appeals@waikatoregion.govt.nz
 2. Service on other parties is complete upon the Court uploading a copy of the notice onto the Environment Court's website.
 3. You may apply to the Environment Court under section 281 of the Resource Management Act 1991 for a waiver of the above timing requirements (see form 38).
 4. 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.
- Advice*
5. If you have any questions about this notice, contact the Environment Court.

SCHEDULE 1 – DETAILED REASONS AND RELIEF SOUGHT

Provision appealed	Specific grounds of appeal/reasons	Relief sought
Objectives		
Objective 1	<p>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 particular 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>	<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>
Objective 2 and Table 3.11-1	<p>Objective 2 sets the target of achieving Table 3.11-1 attribute states within 10 years. The attribute states listed in Table 3.11-1 represent making 20% of the improvement required towards the 80-year freshwater objective. This was increased from the 10% improvement required by PC1 as notified. Fonterra 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 sources.</p> <p>In addition, the objective has been reframed in the decisions version of PC 1 from focusing on having in place and implementing actions sufficient to achieve the reductions, to actually having achieved those reductions. This is a more onerous and less controllable outcome, particularly when the achievement</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. Fonterra 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, in particular, to likely improvement in sediment, phosphorus and E.coli. Consideration for lags needs to be factored into Objective 2.</p>

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	<p>of Table 3.11-1 target attribute states will be heavily influenced by already committed contaminant losses and the lags in the system before those contaminant losses influence in-stream conditions.</p> <p>For all those reasons, there is very low probability that Objective 2 will be met as currently expressed and with the current policy and regulatory settings.</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>Fonterra agrees that Objective 3 should not provide for a direct trade-off between ecological well-being and social and economic well-being and that Objective 3 should not invite such an approach.</p> <p>However, as worded Objective 3 does not capture the full range of ways that social and economic matters are recognised by PC1.</p> <p>For example, PC1 should not make a farmer adopt an expensive mitigation when an equally effective but more affordable option exists. Similarly it should not impose the full burden for achieving outcomes on one sector or group of users, but rather spread that load over all contributors. Those are important principles that should be founded in an objective of the plan. Accordingly, Fonterra considers that the scope of Objective 3 has been overly constrained.</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>
Policies		

Provision appealed	Specific grounds of appeal/reasons	Relief sought
Policy 1	<p>Policy 1 uses an undefined concept of “<i>low intensity farmingwith 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 is 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> <ul style="list-style-type: none"> a. b. c. <i>Enabling, through permitted activity rules, <u>low intensity</u> farming and horticultural activities (not including commercial vegetable production), with low risk (<u>individually and cumulatively</u>) of diffuse discharge of <u>all four</u> contaminants to water bodies, and requiring resource consents for all other activities</i> d. ... e. ...
Policy 2	<p>Policy 2 establishes a highly differentiated approach to managing activities that is not based on the adverse effects of those activities. The relationship between Policy 1 and Policy 2 is not clear but it is clear from looking at how Policy 2 is applied through rules, that Policy 2 a, b and c will not apply to drystock farming (or to commercial vegetable production). Those activities are not required to have a Nitrogen Loss Leaching Rate and hence will not have to demonstrate that their leaching loss is “as low as reasonably practicable”, or, where that leaching loss is high, make “significant reductions”. Those obligations will rest entirely with dairy farming. That situation arises from the use of the drystock-specific 18 winter stocking units (WSU) threshold as an alternative to the Low, Moderate and High leaching loss thresholds of</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

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	<p>Schedule B, Table 1. We address that matter further in relation to Policy 4 and Rule 3.11.4.3.</p> <p>Furthermore, Policy 2 differentiates on the basis of, and seeks to manage, diffuse nitrogen discharges; but the primary risk to the Waikato and Waipā rivers (and 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>Policy 2 is central to the workability and efficacy of PC 1 because it is the primary resource consent decision-making guiding policy for farming activities (as set out in sub part a and b(i)). Yet the policy tests included with Policy 2 are too generally and vaguely expressed, meaning that resource consent applicants have little certainty and applications are likely to be assessed variably and inconsistently. Accordingly, the policy provides low certainty for both farmers and for the community concerned to ensure that plan objectives will be met.</p> <p>The reference in Policy 2 b (iii) to transition periods for land use conversion (within which significant nitrogen loss reductions may not be required) raises many issues and is likely to be the source of confusion and inconsistent application. If the intent is to allow high nitrogen discharging activities to continue for a period of time, before a voluntary land use change occurs then that is a matter that could be considered under a slightly reworded Policy 2 b (ii) without the need for the complication of Policy 2 b (iii).</p> <p>The ability to broadly argue the accuracy of Overseer at the time of consent is inappropriate although Fonterra does accept that whether mitigations have been accounted for in modelling will be</p>	<p>Fonterra's Nitrogen Risk Scorecard should be acceptable metrics.</p> <p>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> <p>E. Policy 2 b (ii) should be amended to read:</p> <p>a. <i>“demonstrate why significant reductions to their Nitrogen Leaching Loss Rate should either not be required; or</i></p> <p>F. Policy 2 b (iii) should be deleted.</p> <p>G. The first bullet point under Policy 2 b should be amended to read:</p> <p><i>The accuracy of Whether the modelled Nitrogen Leaching Loss Rate, including whether captures the benefits of existing contaminant mitigation steps that have been put in place.</i></p> <p>H. Delete the clause under the second bullet of Policy 2 b. as shown below:</p> <p><i>Subject to data availability, the depth of groundwater under the land, the chemical characteristics of that groundwater, the speed that groundwater transmits nitrate-nitrogen leached below the root zone to surface waterways and the likely attenuation of nitrate-nitrogen between the rootzone and any surface waterway</i></p>

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	<p>relevant.</p> <p>While attenuation and transmission factors are relevant considerations in terms of effects on surface water, the poor state of information about these matters (and the expense in obtaining information) means that consideration of attenuation and transmission will result in inconsistent decision-making and inequitable outcomes for landholders.</p>	
<p>Policy 3</p>	<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 the fact that those other farming activities provide many of the same benefits and, generally, at a much greater scale.</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</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 in Policy 2 (or alternatively deleted from Policy 3) to provide a comparable policy framework. C. 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).

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	<p>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>Policy 4</p>	<p>Policy 4a sets out what types of farming require quantification of nitrogen leaching rates. Fonterra says that this, and other parts of the policy, raise a number of issues that need to be addressed.</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>Fonterra 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 (which will often be less than 18su/ha at some point over the same winter months).</p> <p>As set out elsewhere in the notice of appeal, Fonterra says that there should be equivalency in the risk threshold used to assess the nitrogen loss risk of dairy and drystock farms. One way to achieve that is to retain the numeric N loss thresholds of Table 1</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 peak stocking rate of the individual property; (ii) Establish thresholds of Low, Moderate and High risk (using NLLRs and, as an alternative, broadly corresponding peak stocking rates) for the management of farming activities; and (iii) Require appropriate information to demonstrate the NLLR or the peak stocking rate be included within FEPs. 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. C. Insert a new subpart of the policy that requires independently certified FEPs for all farms.

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	<p>of Schedule B but include stocking rates as an alternative risk threshold (calibrated to be reasonably equivalent). Farmers could choose either the Overseer-dependent Nitrogen Leaching Loss Rate or the peak stocking rate option for determining nitrogen loss risk, and hence for determining which of Rules 3.11.4.3, 3.11.4.4 or 3.11.4.7 apply.</p> <p>Applying that approach would mean that Policy 4 should require the FEP to include either the Nitrogen Leaching Loss Rate (prepared in accordance with Schedule B) <u>or</u> the peak stocking rate.</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 is suitably qualified. This allows tools and methods other than Overseer to be used to assess on-going nitrogen loss risk.</p> <p>Fonterra says that 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</p>	

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	<p>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 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>Fonterra supports the idea that the Councils should collect information and undertake research and tool development to enable better, more targeted and more effective management in the future.</p> <p>However, Fonterra is concerned that any account of contaminant losses is done in a like for like fashion between sectors. Given that the planning regime would likely permit almost all drystock farming, the ability to understand and account for contaminant losses from those systems appears weak. Similarly, because N losses will be estimated differently for different sectors (using, for</p>	<p>Amend Policy 10 to reads 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</i></p>

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	<p>example, Overseer for dairy, stocking rate for drystock and a yet to be determined alternative for vegetable production) the potential for poor and/or uncompileable data and misleading results is very high. This could translate into inequitable future policy responses.</p>	<p><i>the design of any future management regime</i></p>
Methods		
<p>Methods 3.11.3.3 and 3.11.3.4</p>	<p>As noted in respect of Policy 10, Fonterra 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> <ul style="list-style-type: none"> a. 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 discharges at a property scale. <p>Amend Part d of Method 3.11.3.4 as follows:</p> <ul style="list-style-type: none"> d. <i>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>
Rules		
<p>Rule 3.11.4.3</p>	<p>Rule 3 inappropriately 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 will not necessarily be more benign in respect of water quality than a low or medium intensity dairy farm (which might</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

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	<p>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>The threshold of 18 winter su/ha is not appropriate and is not supported by evidence. The concept of a winter stocking rate does not manage the risks associated with very high stocking rates at other times of the year. For that reason, Fonterra supports use of a 'peak' stocking rate being the highest rate occurring over the farming year.</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>B <u>or</u> have a stocking rate less than 18* stock units per hectare at peak stocking rate.</p> <p>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.</p> <p>C. be registered with the Council and in conformance with Schedule A provide evidence of the peak and winter stocking rate.</p> <p>D. be subject to annual reporting to Council of an appropriate indicator of Nitrogen loss risk estimated by a certified farm planner using an appropriate decision support tool.</p> <p>* While the metric of 18 stock units (peak) is indicated here as an appropriate "low intensity" threshold, Fonterra seeks that the stocking rate applied by this rule should be that rate that would likely result in nitrogen leaching no greater than the 50thile dairy leaching rate for the relevant FMU (ie. the two indicators of risk should be reasonably aligned).</p>
Rule 3.11.4.4	<p>Fonterra does not consider that the different treatment between drystock and dairy farms is well-founded or 'effects based'. The same threshold metric should apply equally to both farm systems (or, if different metrics are used, they are carefully calibrated to ensure risk is consistently identified and managed).</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>Fonterra considers that the opportunity for a 'tailored solution' for stock exclusion too easily allows exceptions to basic stock exclusion standards to be granted through the controlled activity</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> <p>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</p> <p>B. The farming activity has a Nitrogen Leaching Loss Rate that is 'moderate' according to Table 1 of Schedule B.</p> <p>The following conditions must apply (in addition to the other conditions set out in the decisions version of the rule):</p> <p>A. an FEP for the activity must be prepared by a certified farm</p>

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	<p>consenting process.</p> <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 the vast majority of 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 an RDA.</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>planner that demonstrates N loss maintenance or reduction as required by Policy 2.</p> <p>B. the stock exclusion standards set out in Schedule C must be complied with.</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 peak stocking rate.</p>
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</p>	<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 Fonterra's proposed rule 3.11.4.7.</p>

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	<p>address the particular 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>	
<p>Rule 3.11.4.7</p>	<p>Fonterra supports farming operations with a very high risk of contaminant loss requiring close 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 catchment faces water quality issues associated with sediment, phosphorus and E.coli that are just as (in fact in many places more) severe and more challenging than those associated with nitrogen.</p> <p>Furthermore, given the scope of concern is clearly identifiable around four diffuse contaminants, Fonterra 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>Consistent with its appeal on Rule 3.11.4.3, Fonterra considers the 'winter' stock rate is an inappropriate measure because it potentially allows very high stocking rates outside of the winter period. Fonterra, accordingly, favours use of 'peak' stocking rate metric as a better indicator of actual risk. It considers that an appropriate peak stock unit threshold for high risk farming would be set at the equivalent of the 75th percentile leaching rate.</p>	<p>Amend Rule 3.11.4.7 so that any of the following farming activities (whether drystock or dairy) that 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 25* peak 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 discretionary activity.</p> <p>Ensure that any FEP required under this rule is prepared by a certified farm planner.</p> <p>* While the metric of 25 peak stock units is indicated here, Fonterra seeks that the stocking rate applied in this rule should be that rate that would likely result in nitrogen leaching, equal to or greater than the 75th %ile dairy leaching rate for the relevant FMU.</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</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

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	<p>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 Fonterra 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>the way other farming activities seeking expansion are treated by PC1; or</p> <p>B. Include within the rule and policy framework clear requirements for:</p> <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 ii. To the extent to which i. is not possible on land to be converted, that offsetting of any additional contaminant loss shall apply; and <p>C. 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>Fonterra 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, Fonterra 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>Fonterra 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</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

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	<p>expanding CVP systems. Rule 3.11.4.9 does not manage that risk.</p>	<p>in accordance with any other rule in the plan) to a level above a peak stocking rate of 25 su/ha*.</p> <p>* While the metric of 25 peak stock units is indicated here, Fonterra seeks that the stocking rate applied in this rule should be that rate that would likely result in nitrogen leaching, equal to or greater than the 75th %ile dairy leaching rate for the relevant FMU.</p>
Schedules		
<p>Schedule B</p>	<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 Fonterra supports the use of leaching values as thresholds for activity categories (alongside stocking rate limits as an alternative metric) it considers 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>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 peak stocking rate thresholds. 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 peak stocking rate thresholds. <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>
<p>Other</p>	<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</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

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	<p>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>time; or</p> <p>(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.</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 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 Fonterra 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>Make the following amendments to Schedule D1:</p> <p>A. Amend the note at the beginning of Schedule D1 to clarify that all FEPs must be certified by a certified Farm Environment Planner.</p> <p>B. Provide clear and certain direction about who may approve an N loss risk assessment tool and what the Waikato Regional 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

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	<p>Fonterra 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 (ie, 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. In particular, 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>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><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><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 by making the following change:</p> <p><i>An FEP shall also be reviewed in the event of any material increase in <u>intensity of farming stocking rate, area of cultivation, area under irrigation or change to winter grazing practices.</u></i></p>
Schedule D2	<p>Schedule D2 includes a range of 'goals and principles' that are unclear, untested and for which there is no agreed meaning.</p> <p>Schedule D2 Part C is not clear as to what requirements will apply</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</p>

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	<p>to the on-going assessment of nitrogen loss/nitrogen loss risk. In particular, it is not clear whether annual Overseer reporting will be required against Nitrogen Leaching Loss Rates. As set out in relation to Policy 4, Fonterra says that there are methods other than Overseer modelling that will be appropriate for annual risk assessment. The tools able to be used to monitor nitrogen leaching loss risk from permitted activities (under Schedule D1 part D2) should be available for use in respect of consented activities.</p>	<p>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>