

IN THE ENVIRONMENT COURT
AT AUCKLAND

ENV-2020-AKL-000083

I MUA I TE KOOTI TAIAO O AOTEAROA
TĀMAKI MAKĀURAU

IN THE MATTER of the Resource Management Act 1991

A N D

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

BETWEEN OJI FIBRE SOLUTIONS (NZ) LIMITED

Appellant

A N D WAIKATO REGIONAL COUNCIL

Respondent

NOTICE OF PERSON'S WISH TO BE PARTY TO PROCEEDINGS

Section 274 Resource Management Act 1991

29 September 2020



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To: The Registrar
Environment Court
Auckland

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

OJI Fibre Solutions (NZ) Limited v Waikato Regional Council
ENV-2020-AKL-000083

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

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

Federated Farmers is interested in all of the proceedings.

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

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

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



N J Edwards / L F Jeffries

Counsel for Federated Farmers

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APPENDIX A

Provision Appealed	Reasons for Appeal	Relief Sought by Appellant	Support/Oppose	Reason
Objectives				
Objective 3	The Appellant considers that the Decisions Version fails to enable communities to provide for their social and economic well-being, including productive economic opportunities while managing within limits in a manner consistent with the NPS-FM, and otherwise misinterpret the social and economic directions of Te Ture Whaimana o Te Awa o Waikato.	Amend Objective 3 to give effect to the reasons for the appeal and to better reflect: (a) The wider economic relationship of the community with the river, including that the river needs to “continue to provide for” social, economic and cultural wellbeing; (b) That the Waikato River has some assimilative capacity.	Support in part Oppose in part	Federated Farmers is interested in this appeal point so as to ensure that any outcomes are consistent with the outcomes sought in Federated Farmers’ appeal.
Policies				
Policy 2	The Appellant sets out a range of reasons for its appeal of the policies relating to point source discharges and/or offsetting and compensation. These were: - That the Decisions Version inappropriately conflate the objectives and policies of Te Ture Whaimana o Te Awa o Waikato as requiring a “no effects” bottom line approach to new or replacement resource consents that are sought for discharges of nitrogen, phosphorus, sediment and microbial pathogens contaminants (“ the four contaminants ”) to land or water that may enter water; and / or otherwise fail to recognise that the application of offsetting or compensation is not	Amend Policy 2 as follows: ... e. Generally not granting land use consent applications for changes in land use that involve a material increase in the intensity of the use of land compared to the land uses as at 22 October 2016, unless it can be demonstrated that this would result in a positive contribution to the health and wellbeing of the Waikato and Waipā river catchments in accordance with Policy 5; and	Support	Federated Farmers is concerned that the focus of paragraph c is on no “material increase” in intensity of land use (but it is not clear how this would be defined) and on requiring offsetting or environmental compensation where there is. In principle, Federated Farmers would support an approach that applies flexibility to consider offsetting or environmental compensation, but considers that this depends on the particular water quality issues in the sub-catchment and how “material increase” in intensity of land use is defined. Federated Farmers is also concerned that the effect of this paragraph may be to grandparent land uses to the intensity (in stocking rates, farm system or some other factors) that they were used for in 2016. Federated Farmers does not support an approach.

	<p>required to achieve a “no effects” result.</p> <ul style="list-style-type: none"> - That the Decisions Version fails to recognise or clarify that Te Ture Whaimana o Te Awa o Waikato can be given effect to by providing for the continued operation and development of industry or infrastructure through the achievement of the water quality attribute states in Table 3.11.1; - The Decisions Version fails to appropriately provide for the continued operation and development of industry or infrastructure in circumstances other than where it protects and restores the river; - That the Decisions Version fails to reflect the social and economic benefits of new or replacement resource consents for regionally or nationally significant industry or infrastructure by: <ul style="list-style-type: none"> (i) Not referring to the need to achieve (revised) Objective 3; and (ii) Not promoting “best practice” (rather than requiring no net effect). - That the Decisions Versions, fails to appropriately recognise, 		<p>Federated Farmers considers that flexibility needs to be provided to recognise that some intensification may need to occur in response to markets or droughts (e.g. changes to sheep:cattle ratios, holding stock longer during droughts), 2016 may not be a representative year (e.g. farming intensities may be impacted by economic or climatic events at the time) and that some intensification may achieve better environmental outcomes (e.g. intensifying on flat areas of a farm in order to fund the retirement of steep areas).</p> <p>Federated Farmers also considers the linkage to Policy 5 to be too stringent and to not provide sufficient flexibility to recognise that farming needs to adapt to unforeseen and unforeseeable events like drought, flooding, market prices etc. Federated Farmers also considers that it is not consistent with the framework for point source discharges created by Policy 12.</p> <p>Federated Farmers supports the deletion on paragraph c</p>
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	<p>for the purposes of PC1, that when considering replacement resource consents for discharges from regionally significant industry and infrastructure, the situations where significant advances have already been made in reducing discharges of the four contaminants;</p> <ul style="list-style-type: none"> - That the Decisions Version inappropriately obligate (explicitly or implicitly) offsetting / compensation for the residual adverse effects associated with new or replacement resource consents for discharges of the four contaminants to land or water that may enter water; - That the Decisions Version fail to recognise or clarify that offsetting / compensation may be proposed pursuant to s104(1)(ab) and / or that this is the most appropriate way to address the issue. 			
Policy 5	<p>The Appellant sets out a range of reasons for its appeal of the policies relating to point source discharges and/or offsetting and compensation. These were:</p> <ul style="list-style-type: none"> - That the Decisions Version inappropriately conflate the objectives and policies of Te Ture 	Delete Policy 5.	Oppose	In principle, Federated Farmers supports a policy that allows for offsetting and compensation because that potentially provides greater flexibility for how environmental benefits will be achieved and helps to reduce the costs.

	<p>Whaimana o Te Awa o Waikato as requiring a “no effects” bottom line approach to new or replacement resource consents that are sought for discharges of nitrogen, phosphorus, sediment and microbial pathogens contaminants (“the four contaminants”) to land or water that may enter water; and / or otherwise fail to recognise that the application of offsetting or compensation is not required to achieve a “no effects” result.</p> <ul style="list-style-type: none"> - That the Decisions Version fails to recognise or clarify that Te Ture Whaimana o Te Awa o Waikato can be given effect to by providing for the continued operation and development of industry or infrastructure through the achievement of the water quality attribute states in Table 3.11.1; - The Decisions Version fails to appropriately provide for the continued operation and development of industry or infrastructure in circumstances other than where it protects and restores the river; 			<p>While, Federated Farmers considers that amendments are needed to Policy 5 to provide some the context for this assessment using a framework to establish key parameters (as outlined in the Federated Farmers’ appeal) it does not consider that Policy 5 should be deleted outright.</p>
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	<ul style="list-style-type: none">- That the Decisions Version fails to reflect the social and economic benefits of new or replacement resource consents for regionally or nationally significant industry or infrastructure by:<ul style="list-style-type: none">(i) Not referring to the need to achieve (revised) Objective 3; and(ii) Not promoting “best practice” (rather than requiring no net effect).- That the Decisions Versions, fails to appropriately recognise, for the purposes of PC1, that when considering replacement resource consents for discharges from regionally significant industry and infrastructure, the situations where significant advances have already been made in reducing discharges of the four contaminants;- That the Decisions Version inappropriately obligate (explicitly or implicitly) offsetting / compensation for the residual adverse effects associated with new or replacement resource consents for discharges of the four contaminants to land or			
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	<p>water that may enter water;</p> <ul style="list-style-type: none"> - That the Decisions Version fail to recognise or clarify that offsetting / compensation may be proposed pursuant to s104(1)(ab) and / or that this is the most appropriate way to address the issue. 			
<p>Policy 8</p>	<p>The Appellant sets out a range of reasons for its appeal of the policies relating to point source discharges and/or offsetting and compensation. These were:</p> <ul style="list-style-type: none"> - That the Decisions Version inappropriately conflate the objectives and policies of Te Ture Whaimana o Te Awa o Waikato as requiring a “no effects” bottom line approach to new or replacement resource consents that are sought for discharges of nitrogen, phosphorus, sediment and microbial pathogens contaminants (“the four contaminants”) to land or water that may enter water; and / or otherwise fail to recognise that the application of offsetting or compensation is not required to achieve a “no effects” result. - That the Decisions Version fails to recognise or clarify that Te Ture Whaimana o Te Awa o Waikato can 	<p>Amend Policy 8 as follows:</p> <p>a. People and communities will need to collectively change practices and activities so as to contribute proportionately to achieving the short-term numeric water quality values in Table 3.11-1 for the catchments as a whole; and</p> <p>b. Recognise that the changes will need to continue more than 10 years after Chapter 3.11 of this Plan is operative while minimising the adverse social and economic impacts on people and communities, enabling innovation and new practices to develop, and responding to the reasonably foreseeable effects of climate change.</p>	<p>Support in part Oppose in part</p>	<p>In principle, Federated Farmers supports the intent of Policy 8 in terms of acknowledging that people and communities (not just individual farm properties) need to change, that change will be ongoing but that adverse effects need to be minimised.</p> <p>Federated Farmers agrees that the change of practices should be proportionate to the effect of the people and community. Federated Farmers considers that this could be reflected through the sub-catchment profiles proposed in its appeal.</p>

	<p>be given effect to by providing for the continued operation and development of industry or infrastructure through the achievement of the water quality attribute states in Table 3.11.1;</p> <ul style="list-style-type: none">- The Decisions Version fails to appropriately provide for the continued operation and development of industry or infrastructure in circumstances other than where it protects and restores the river;- That the Decisions Version fails to reflect the social and economic benefits of new or replacement resource consents for regionally or nationally significant industry or infrastructure by:<ul style="list-style-type: none">(i) Not referring to the need to achieve (revised) Objective 3; and(ii) Not promoting “best practice” (rather than requiring no net effect).- That the Decisions Versions, fails to appropriately recognise, for the purposes of PC1, that when considering replacement resource consents for discharges from regionally significant industry and			
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	<p>infrastructure, the situations where significant advances have already been made in reducing discharges of the four contaminants;</p> <ul style="list-style-type: none"> - That the Decisions Version inappropriately obligate (explicitly or implicitly) offsetting / compensation for the residual adverse effects associated with new or replacement resource consents for discharges of the four contaminants to land or water that may enter water; - That the Decisions Version fail to recognise or clarify that offsetting / compensation may be proposed pursuant to s104(1)(ab) and / or that this is the most appropriate way to address the issue. 			
<p>Policy 10</p>	<p>The Appellant sets out a range of reasons for its appeal of the policies relating to point source discharges and/or offsetting and compensation. These were:</p> <ul style="list-style-type: none"> - That the Decisions Version inappropriately conflate the objectives and policies of Te Ture Whaimana o Te Awa o Waikato as requiring a “no effects” bottom line approach to new or replacement resource consents that are sought for discharges of 	<p>Delete Policy 10 and replace it with the following:</p> <p><u>Collect information and undertake research about current discharges, appropriate modelling tools to estimate contaminant discharges, the spatial variability of land use and contaminant losses, and the extent of improvements in farm practices to reduce contaminant discharges. Any information and research should consider the following:</u></p> <p><u>a. Land suitability reflecting the biophysical properties and prevailing</u></p>	<p>Support in part Oppose in part</p>	<p>While Federated Farmers considers that further information needs to be collected and that the catchment needs to be better understood, Federated Farmers does not support the wording contained within the Decisions Version. Federated Farmers supports the intent of the relief sought but considers further drafting is required.</p>

	<p>nitrogen, phosphorus, sediment and microbial pathogens contaminants (“the four contaminants”) to land or water that may enter water; and / or otherwise fail to recognise that the application of offsetting or compensation is not required to achieve a “no effects” result.</p> <ul style="list-style-type: none">- That the Decisions Version fails to recognise or clarify that Te Ture Whaimana o Te Awa o Waikato can be given effect to by providing for the continued operation and development of industry or infrastructure through the achievement of the water quality attribute states in Table 3.11.1;- The Decisions Version fails to appropriately provide for the continued operation and development of industry or infrastructure in circumstances other than where it protects and restores the river;- That the Decisions Version fails to reflect the social and economic benefits of new or replacement resource consents for regionally or nationally	<p><u>climatic conditions of land, the risk of contaminant discharges from that land, and the sensitivity of relevant receiving water bodies; and</u></p> <p><u>b. New data and knowledge relevant to nutrient discharges and allocation of nutrient loadings.</u></p>		
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	<p>significant industry or infrastructure by:</p> <ul style="list-style-type: none">(i) Not referring to the need to achieve (revised) Objective 3; and(ii) Not promoting “best practice” (rather than requiring no net effect). <ul style="list-style-type: none">- That the Decisions Versions, fails to appropriately recognise, for the purposes of PC1, that when considering replacement resource consents for discharges from regionally significant industry and infrastructure, the situations where significant advances have already been made in reducing discharges of the four contaminants;- That the Decisions Version inappropriately obligate (explicitly or implicitly) offsetting / compensation for the residual adverse effects associated with new or replacement resource consents for discharges of the four contaminants to land or water that may enter water;- That the Decisions Version fail to recognise or clarify that offsetting / compensation may be proposed pursuant to s104(1)(ab) and / or			
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	that this is the most appropriate way to address the issue.			
Policy 19	That the Decisions Version set policy relating to enhancement of biodiversity and opportunities to enhance access and recreational values that advance matters falling outside the scope of PC1.	Delete Policy 19	Support	<p>Federated Farmers agrees that the matters addressed in Policy 19 are outside the scope of the plan change.</p> <p>Even if they were in scope, Federated Farmers considers Policy 19 to be inappropriate, in that it is not appropriate to consider “opportunities to enhance biodiversity and the functioning of ecosystems” and “opportunities to enhance access and recreational values associated with rivers” that are not related to the plan change when processing or managing resource consent applications that are made in reliance of the provisions in Chapter 3.11.</p> <p>It is considered that biodiversity outcomes should not be the drivers of measures taken to address water quality issues, rather biodiversity will follow water quality outcomes.</p> <p>Accordingly, Federated Farmers agrees to the deletion of Policy 19.</p>
Rules				
Rule 3.11.4.9 – Non-Complying Activity Rule – Land use change	<p>Through regulation of land use change under Policy 2 (c) and Rule 3.11.4.9, that the Decisions restrict land use flexibility in a manner that is inconsistent with Part 2 of the RMA;</p> <p>That the Decisions Version, in finding that permitted farming</p>	Give effect to the reasons for the appeal by: (a) Deleting Rule 3.11.4.9 so that the use of land for farming is governed by Rules 3.11.4.1 to 3.11.4.8; or (b) If the Rule is not deleted, by reinstating the expiry date of 1 July 2026, as notified.	Support in part Oppose in part	<p>Federated Farmers supports the deletion of Rule 3.11.4.9 and considers that land use change ought to be provided for as a discretionary activity. Federated Farmers considers that a non-complying activity for land use change is too high a threshold. Federated Farmers considers that a non-complying activity status (including the section 104D gateway test) is more</p>

	<p>activities (per rules 3.11.4.1, 2 and 3) will have a relatively low risk of more than minor discharges of the four contaminants, err by failing to apply a consistent, equitable approach to other land uses seeking to change to farming; and</p> <p>That the Decisions Version lack scope or jurisdiction to remove Rule 3.11.4.9's notified expiry date of 1 July 2026. No submission requesting retention of the Rule sought deletion of the expiry date.</p>		<p>appropriate for activities that have not been contemplated. In contrast, PC1 provides a robust objective and policy framework for considering a consent application for land use change.</p> <p>However, should the non-complying activity rule be retained Federated Farmers considers that the end of rule date of 1 July 2026 should not be reinstated.</p> <p>Federated Farmers concurs with the section 42A report analysis that given the delays to finalising PC1, it would seem unrealistic that a new planning regime would be ready for notification by 2026. The Section 42A Officers were concerned that a fixed end date, whether or not closer in time to now, is problematic and may lead to the need for a future plan change, just to remove that date.</p> <p>With the above in mind, Federated Farmers considers the July 2026 is both overly optimistic in terms of developments in the PC1 process and potentially problematic in trying to remove it in the future.</p>
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