

**IN THE ENVIRONMENT COURT
AUCKLAND REGISTRY**

ENV-2017-AKL- 000083

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of appeals under Clause 14(1) of the First
Schedule of the Act in relation to the
Proposed Plan Change 1 to the Waikato
Regional Plan

BETWEEN **Fonterra Ltd**

Appellant

AND **Waikato Regional Council**

Respondent

**NOTICE OF WISH TO BE
PARTY TO PROCEEDINGS PURSUANT TO
SECTION 274 RESOURCE MANAGEMENT ACT 1991**

To: The Registrar

Environment Court

Auckland

1. Horticulture New Zealand ("**HortNZ**") wishes to be a party pursuant to section 274 of the Resource Management Act 1991 ("**RMA**") to the following proceedings:
 - (a) *Fonterra Ltd v Waikato Regional Council* (**ENV-2017-AKL 000083**) being an appeal against decisions of the Waikato Regional Council on the Proposed Plan Change 1 to the Waikato Regional Plan.
2. HortNZ made submissions and further submissions on the Proposed Plan Change 1 (submitter number 73801).
3. HortNZ also has an interest in these proceedings that is greater than the general public as it represents interest groups in the community that are likely to be adversely affected by the proposed relief sought by the Respondent
4. HortNZ is not a trade competitor for the purposes of section 308C or 308CA of the RMA.
5. HortNZ is interested in the whole proceedings, noting particular interest to the points set out in the attached table.
6. HortNZ agrees to participate in mediation or other alternative dispute resolution of the proceedings.

Lucy Deverall

Advisor, North Island, Natural Resources and Environment
Horticulture New Zealand

29 September 2020

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Advice

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

Fonterra Ltd v Waikato Regional Council ENV-2020-AKL-000084

Provision appealed	Relief sought	Support / Oppose	Reason
Objective 2	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.	Neutral	HortNZ agree that discussion is required on any changes to the plan change in order to implement the 20% reduction
Policy 1	Amend Policy 1(c) to read: <i>Enabling, through permitted activity rules, low intensity farming and horticultural activities (not including commercial vegetable production), with low risk (individually and cumulatively) of diffuse discharge of <u>all four</u> contaminants to water bodies, and requiring resource consents for all other activities...</i>	Oppose	HortNZ question the scope relating to the cumulative impacts of low intensity activities given this was not raised in evidence.
Policy 2	Amend as: 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. 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.	Support in part	Agree that clarity is needed on the tests of "reduce to the lowest practicable level" and "significant reduction"

	Delete Policy 2 b (iii) and the second bullet point under Policy 2 b		
Policy 3	<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> <p>A. A provision mirroring Policy 2c should be included within Policy 3.</p> <p>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.</p> <p>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).</p>	Oppose	HortNZ's evidence clearly demonstrates the diffuse discharge effects, and the positive contributions of any new CVP within specified areas limits. The area limits already demonstrate benefits of landuse change and are themselves an offset so this is already built into the rule framework. Further requirements for offsetting and compensation can be assessed through Policy 5. Therefore, the suggested changes to Policy 3 are not necessary as the relief sought is already built into the rule.
Policy 4	<p>Amend Policy 4 to as follows:</p> <p>A. Amend sub part a of the policy to provide the foundation for PC 1 to:</p> <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 	Neutral	HortNZ agrees that clarification is required around the review of the Nitrogen leaching loss rate (NLR) but would require further information around the process. HortNZ is interested in understanding about the risk identification approach and implications on the wider plan change 1 framework.

	<p>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.</p> <p>B. Include a new subpart in Policy 4 that requires, in respect of all FEPs, the annual monitoring of on-going N loss risk to be undertaken to demonstrate that (at minimum) nitrogen loss risk is not increasing over time. Explicitly enable N loss risk to be assessed using means other than Overseer leaching estimates in the same way as already provided for in Schedule D1 Part D2 in respect of FEPs associated with permitted activities.</p> <p>C. Insert a new subpart of the policy that requires independently certified FEPs for all farms.</p>		
Rule 3.11.4.4	<p>Amend Rule 3.11.4.4 so that any farming activity (whether drystock or dairy) that: exceeds stocking rates in r 3.11.4.3 but not 3.11.4.7; or has a NLLR of 'Moderate' is a controlled activity, and the following conditions must apply: An FEP must be prepared by a certified farm planner that demonstrates N loss maintenance or reduction as required by Policy 2; and 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</p>	Oppose in part	It is appropriate to allow preparation of farm environment plans (FEPs) for consented activities where these are then certified by a certified farm environment planner/suitably qualified person.

	Rate. Otherwise require the supply of a peak stocking rate.		
Rule 3.11.4.5	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.	Oppose	Controlled activity status is appropriate given the specified matters of control and standards/conditions, combined with the FEP process. CVP is unique in its limitation to types of land which are in short supply. Constraining existing CVP will have significant implications to supply of vegetables for human health.
Rule 3.11.4.7	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: 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. 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. Ensure that any FEP required under this rule is prepared by a certified farm planner.	Oppose in part	It is appropriate to allow preparation of farm environment plans (FEPs) for consented activities where these are then certified by a certified farm environment planner/suitably qualified person.
Rule 3.11.7.8	Either: A. Amend Rule 3.11.4.8 to be a non-complying rule consistent with the way other farming activities seeking expansion are treated by PC1; or	Oppose	HortNZ's evidence demonstrated the need for growth and impact of growth on water quality within specified area limits. The rule incorporates offsetting and compensation through application of limits and any

	<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>		<p>consent would be subject to Policy 5. The area limits, combined with the wider policy framework and FEP process ensures that a Discretionary activity status is appropriate.</p> <p>Limiting growth until existing CVP is consented will have significant implications on the supply of fresh vegetables with ongoing implications for current and future health and wellbeing of individuals and communities.</p>
Schedule B	<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>	Neutral	<p>HortNZ are interested in understanding consequential impacts from any recalculation of NLR as sought.</p>

Other	<p>Amend PC 1 to ensure that any conditions imposed on resource consents relating to nitrogen loss/risk limits require that either:</p> <p>(a) The nitrogen loss/risk limit to be determined by, and compliance assessed by a tool or methodology that does not change over time; or</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>	Neutral	HortNZ are interested in understanding consequential impacts from any recalculation of NLR as sought.
Schedule D2	<p>Replace the goals and principles of Schedule D2 with the well-known Industry Agreed Good Farming Practices (GFP), complemented as necessary with additional detail from the associated GFP guidelines and other specific matters as may be relevant to the Waikato context.</p> <p>Provide clarity over the requirement that will apply to on-going monitoring and reporting of nitrogen loss risk. This should include provision for use of alternative (to Overseer) risk estimation tools for any farming activity.</p>	Neutral	HortNZ supports use of industry approved GFP but also supports a goals and principles approach which allows for some consistency while recognising individual farm traits.