

**BEFORE THE ENVIRONMENT COURT  
AT AUCKLAND**

**ENV-2020-AKL-000097**

**IN THE MATTER**

of the Resource Management Act 1991

**AND**

**IN THE MATTER**

of an appeal under clause 14(1) of the First Schedule of the Resource Management Act 1991 in relation to the Proposed Waikato Regional Plan Change 1: Waikato and Waipa Catchments

**BETWEEN**

**Dairy NZ Limited**  
Appellant

**AND**

**Waikato Regional Council**  
Respondent

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**NOTICE OF BALLANCE AGRI-NUTRIENTS LIMITED'S  
WISH TO BE A PARTY TO THE PROCEEDINGS PURSUANT TO  
SECTION 274 OF THE RESOURCE MANAGEMENT ACT 1991**

**TO:** The Registrar  
Environment Court  
AUCKLAND

**Via E-mail:** [WRC.PC1appeals@justice.govt.nz](mailto:WRC.PC1appeals@justice.govt.nz)

1. Ballance Agri-Nutrients Limited ('**BAN**') wishes to become a party to an appeal by Dairy NZ Limited ('**Dairy NZ**') (under clause 14(1) of the First Schedule of the Resource Management Act 1991 ('**RMA**') in relation to the Respondent's decisions on the Proposed Waikato Regional Plan Change 1: Waikato and Waipa Catchments ('**PC1**').
2. This notice is made as BAN submitted on the provisions of PC1 to which this appeal relates.
3. BAN is not a trade competitor for the purposes of section 308C or 308CA of the RMA.
4. BAN has an interest in the following parts of the proceedings:
  - (a) Objective 2; and
  - (b) Schedule D1.
5. BAN supports the relief sought by Dairy NZ to Objective 2 and Schedule D1.

**Objective 2 (Freshwater Objective)**

- 5.1 Dairy NZ notes that 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. Dairy NZ records that this was increased from the 10% improvement required by PC1 as notified. Dairy NZ 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 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. Further, Dairy NZ states that the decisions version of Objective 2 changes the short-term attribute states and the way the objective was worded from that of the proposed plan change, so that 'short term numeric water quality values in Table 3.11-1 are required to be met'. Dairy NZ considers that this is inappropriate. In this regard, Dairy NZ notes that previously the proposed objective referred to 'actions put in place and implemented' in order to acknowledge that changes on the land would take time to be reflected in water quality (lags) and would not all be measured within ten years of PC1. Dairy NZ considers the proposed plan change wording to be more appropriate.
- 5.2 Dairy NZ requests that Objective 2 and Table 3.11-1 and the associated explanatory text should be amended to clarify what is expected to be achieved by PC1, including consideration of time lags between what happens on the land and what is measured in the water. Dairy NZ notes that 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 the appeals. Given this, Dairy NZ requests that Objective 2 and Table 3.11-1 be revisited iteratively with consideration of other appeal points in relation to the scope and efficacy of policies and methods that apply to likely improvement in sediment, phosphorus and E.coli, and that,

in addition, Objective 2 is amended to read: *“Progress is made over the life of this Plan towards the restoration and protection of the health and wellbeing of the Waikato and Waipā River catchments in relation to actions put in place and implemented for nitrogen, phosphorus, sediment and microbial pathogens being sufficient to achieve water quality improvements as indicated by the short-term numeric water quality values in Table 3.11-1 ~~being met no later than~~ 10 years after Chapter 3.11 of this Plan is operative.”*

- 5.3 Further, Dairy NZ seeks that the explanatory text to Section 3.11.6 is retained as it clarifies that short-term water quality attribute states will not be used as receiving water limits for the purpose of granting resource consents for Farm Environment Plans (‘FEPs’) or assessing compliance with those consents.
- 5.4 BAN supports the requirement to stage water quality standards through the introduction of short-term improvements in water quality over the 10 year period. BAN considers it appropriate that Objective 2 and Table 3.11-1 are revisited iteratively throughout the appeal process, and as the policies and methods are developed to ensure that the objective, together with the attribute states proposed within the table are appropriate and achievable. BAN notes that considerable changes to farm practices will be required in order to meet the requirements of Objective 2, however, that some of these changes will be difficult to achieve. As such, BAN also supports consideration for lags being included within Objective 2. In its evidence to this Objective, BAN stated that in its experience on-site changes take time to implement and the speed for which change occurs is influenced by a number of other factors, such as climatic conditions, financial resources and the availability of people and technology to undertake the change.

#### **Schedule D1**

- 5.5 Dairy NZ considers that there are a range of issues with Schedule D1, such as, for example, 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 PC1. Further, Dairy NZ states that 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 good farm practices are in place, Dairy NZ considers that this audit would have to replicate the certified farm plan process. Given this, Dairy NZ notes that it would seem more efficient and more certain for farmers, to ensure all FEPs are created to a consistent high standard from the outset. While Dairy NZ 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. In addition, and amongst other issues identified, Dairy NZ notes that it supports the idea that there should be an annual requirement to demonstrate that Nitrogen (‘N’) loss/N loss risk has not increased over the previous years and, in particular, that this may be demonstrated by a range of potential tools (i.e., that this is not limited to Overseer but could include tools such as Fonterra’s Nitrogen Risk Scorecard). However, Dairy NZ considers that there is lack of clarity within Schedule D1 as to who may approve such tools and how the Waikato Regional Council will determine who is suitably qualified to undertake such approval. Dairy NZ also states that uncertainty is introduced by Part E 2 of Schedule D1, which implies that a material increase in intensity is allowed as a permitted activity, albeit it will trigger a review of the FEP. Dairy

NZ considers that this seems to contradict Part D 2 which suggests that no increase in N is permissible. Also, Dairy NZ highlights that 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. Dairy NZ records that 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. Dairy NZ states that it should be.

5.6 Given all of the issues that Dairy NZ has identified with regard to Schedule D1, it requests the following amendments:

- Amend the note at the beginning of Schedule D1 to clarify that all FEPs must be certified by a certified Farm Environment Planner.
- 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.
- Amend Part D 2 so that it is clear that:
  - 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;
- 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.
- Amend Part D 10 by adding the following:

*"b. Except as provided in c below, information described in a) above is provided to the Waikato Regional Council on request*

*c. 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.*

- Amend Part E by either deleting item b or by making the following change:  
*"An FEP shall also be reviewed in the event of any material increase in ~~intensity of farming~~ stocking rate, area of cultivation, area under irrigation or change to winter grazing practices."*

5.7 BAN agrees that the requirements for Farm Environment Plans prescribed in Schedule D1 must be clear, practical and use terminology that is easy to understand and does not result in confusion when it comes to what is intended. Further, BAN considers that it is crucial that all FEPs are certified by a person with the appropriate qualifications and experience. In this respect, given the role of a FEP in the consenting process, BAN considers that the role of a Certified Farm Environment Planner is very important. Certified Farmer Environment Planners are required to provide farmers with expert assistance so that their (the farmers) FEPs are robust, and developed with an appropriate degree of rigor and objectivity.

6.0 BAN agrees to participate in mediation or other alternative dispute resolution of the proceedings.



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**Dominic Adams**

**Environmental Manager for Ballance Agri-Nutrients Limited**

**Dated:** 28<sup>th</sup> of September 2020

**Address for Service 1:** Ballance Agri-Nutrients Limited  
Hewletts Road, Mount Maunganui,  
Private Bag 12503  
Tauranga Mail Centre  
TAURANGA 3143

**Attention:** Dominic Adams

**E-mail:** [Dominic.Adams@ballance.co.nz](mailto:Dominic.Adams@ballance.co.nz)

**Address for Service 2:** Enspire,  
Level 3, 35 Grey Street,  
TAURANGA 3110

**Attention:** Bridgette Munro

**E-mail:** [bridgette@enspire.co.nz](mailto:bridgette@enspire.co.nz)

**Note to person wishing to be a party**

You must lodge the original and 1 copy of this notice with the Environment Court within 15 working days after–

- the period for lodging a notice of appeal ends, if the proceedings are an appeal; or
- the decision to hold an inquiry, if the proceedings are an inquiry; or
- the proceedings are commenced, in any other case.

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. The notice must be signed by you or on your behalf.

You must serve a copy of this notice on the relevant local authority and the person who commenced the proceedings within the same 15 working day period and serve copies of this notice on all other parties within 5 working days after that period ends.

However, 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).

*Advice*

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