

**BEFORE THE ENVIRONMENT COURT
AUCKLAND REGISTRY**

ENV-2020-AKL-000098

**I TE KŌTI TAIAO O AOTEAROA
TĀMAKI MAKAURAU ROHE**

IN THE MATTER of the Resource Management Act 1991 (the Act)

AND

IN THE MATTER of an appeal under clause 14 of Schedule 1 of the Act
against the decision of the Waikato Regional Council on
Proposed Plan Change 1 to the Waikato Regional Plan

BETWEEN **WAIRAKEI PASTORAL LIMITED**

Appellant

AND **WAIKATO REGIONAL COUNCIL**

Respondent

**NOTICE BY SOUTHERN PASTURES LIMITED PARTNERSHIP TO BECOME A
PARTY TO PROCEEDINGS UNDER SECTION 274 OF THE ACT**

Dated 29 September 2020

TOMPKINS | WAKE

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TO: The Registrar
Environment Court
Auckland

1. **SOUTHERN PASTURES LIMITED PARTNERSHIP** (“Southern Pastures”) gives notice under s 274 of the Resource Management Act 1991 (“RMA”) that it wishes to be a party to these proceedings, being *Wairakei Pastoral Limited v Waikato Regional Council* (ENV-2020-AKL-00098) (“the Appeal”).
2. The Appeal challenges part of the decision by the Respondent on Proposed Waikato Regional Plan Change 1 - Waikato and Waipā River Catchments, as amended by Variation 1 (“PC1”), (“the Decision”).
3. Southern Pastures is a person who made a submission about the subject matter of the proceedings.
4. Southern Pastures is also a person who has an interest in these proceedings that is greater than the interest the general public has, in particular because:
 - (a) Southern Pastures owns ten farms within the Waikato Region which are located within the jurisdictional boundaries of both South Waikato District Council and Taupo District Council. All ten farms have established and operational dairy platforms which have operated for some years.
 - (b) The policies and rules in PC1 have a direct impact on Southern Pastures’ farming operations.
 - (c) Southern Pastures supports the underlying principles of PC1 and the need to restore and protect the Waikato River and its tributaries, within the context of a staged implementation of the proposed regulatory framework in PC1.

5. Southern Pastures is not a trade competitor for the purposes of section 308C or 308CA of the RMA.
6. Southern Pastures is interested in the Appeal in its entirety and supports the specific relief sought as set out in the table **attached as Annexure A** to this Notice.
7. Southern Pastures supports, or supports in part, the relief sought by the Appellant for the reasons stated in the Appellant's Notice of Appeal and on the basis that the provisions of PC1 should be further amended to ensure that these are clear, certain and provides flexibility for land use management on farm, within the proposed nitrogen leaching loss rate and contaminant reduction regime. Such amendments will better implement the Vision and Strategy for the Waikato River and give effect to Part 2 of the RMA.
8. Southern Pastures agrees to participate in mediation or other alternative dispute resolution of the proceedings.

DATED at Hamilton this 29th day of September 2020



M Mackintosh

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In accordance with the Environment Court Decision No. [2020] NZEnvC 063 this notice is lodged with the Environment Court at WRC.PC1appeals@justice.govt.nz and served on:

The Council at: PC1Appeals@waikatoregion.govt.nz

The Appellant at: bcarruthers@shortlandchambers.co.nz

Advice

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

Annexure “A”

Provision	Relief Sought	Support/Oppose
Objective 1	Amend Objective 1 as follows: In relation to the effects of nitrogen, phosphorus, sediment and microbial pathogens on water quality, the health and wellbeing of the Waikato and Waipā Rivers, including all springs, lakes and wetlands <u>waterbodies</u> within their catchments, is both restored over time and protected, with the result that in particular, they are safe for people to swim in and take food from at the latest by 2096	Support in part, subject to further amendments which may be necessary to address any unintended consequences arising from the proposed amendment to refer to the term “waterbodies” as defined in Clause 5, Schedule C.
Objective 2	Amend Objective 2 as follows: 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 nitrogen, phosphorus, sediment and microbial pathogens 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.	Support
Policy 1(c)	Amend as follows: Enabling, through permitted activity rules, low intensity farming and horticultural activities (not including commercial vegetable production), with low risk of diffuse discharge of <u>those</u> contaminants to water bodies, and requiring resource consents for all other activities	Support
Policy 2(a)	Amend as follows:	Support

	<p>Requiring farming activities with a Nitrogen Leaching Loss Rate within the Moderate Nitrogen Leaching Loss range set out in Schedule B Table 1 to obtain a resource consent, and to demonstrate that either the Nitrogen Leaching Loss Rate is already as low as practicable given the current land use or that the Nitrogen Leaching Loss Rate will reduce to the lowest practicable level over an appropriate specified period</p>	
Policy 2(b)	Delete Policy 2(b), third bullet point.	Support
Policy 2(c)	Delete.	Support
Policy 2 (d) – (f)	<p>Amend as follows:</p> <p>(d) Generally excluding farmed cattle, horses, deer and pigs from rivers, streams, drains, wetlands, lakes and springs <u>waterbodies</u>; and</p> <p>(e) Where farmed cattle, horses, deer and pigs are not excluded from rivers, streams, drains, wetlands, lakes and springs <u>waterbodies</u>:</p> <p>...</p> <p>(ii) imposing consent conditions to require mitigation measures to address any damage to aquatic habitat and discharge of contaminants resulting from stock access to those waterbodies; and</p>	Support

	(f) Encouraging creation of riparian buffers (with appropriate riparian vegetation where necessary) adjacent to rivers, streams, drains, wetlands, lakes and springs <u>waterbodies</u> to reduce overland flow of contaminants <u>phosphorus, sediment and microbial pathogens</u> and improve freshwater habitat quality.	
Policy 4(a)	Amend as follows: If a property is used for dairy farming, commercial vegetable production, or has a stocking rate of more than 18 stock units per hectare and/or more than 5% in arable cropping, use an appropriate decision support tool in accordance with Schedule B of this Chapter, to quantify the Nitrogen Leaching Loss Rate for the property	Support
Policy 4(d)	Amend as follows: Identify suitable mitigating actions appropriate to the land, its use, risk assessment and the short-term numeric water quality values specified in Table 3.11-1 for the sub-catchment(s) within which the land is located and downstream catchments	Support
Policy 5	Delete Policy 5 and replace it with the following: Provide consent applicants opportunities to offset or compensate residual adverse effects by: a. A like for like offset to achieve the water quality objectives of Te Ture Whaimana o Te Awa o Waikato when:	Support in part, insofar as Policy 5 as proposed to be amended would apply to farming activities and subject to amendments which would address the point that a single consent applicant/application cannot achieve the overall water quality objectives of PC1. Each applicant/application

	<ul style="list-style-type: none"> i. There is no net increase in a contaminant set out in Table 3.11.2 as a priority for reduction in the sub-catchment in which the property being farmed or land use change is located; and ii. The measures provide a reduction of the same contaminant. <p>b. Compensation to achieve the water quality objectives of Te Ture Whaimana o Te Awa o Waikato when:</p> <ul style="list-style-type: none"> i. The measures provide a reduction in the diffuse discharge of nitrogen, phosphorus, sediment or microbial pathogens in the Waikato and Waipā river catchment(s); and ii. The measures provide positive benefits to the restoration and protection of the health and wellbeing of the Waikato and Waipā Rivers. <p>c. Compensation in the form of methods to advance achievement of the broader objectives of Te Ture Whaimana o Te Awa o Waikato including but not limited to:</p> <ul style="list-style-type: none"> i. Opportunities to enhance biodiversity and the functioning of ecosystems; and ii. Opportunities to enhance access to and recreational values of the Waikato and Waipā Rivers. 	<p>should be considered in the context of its proportionate contribution to achieving those objectives.</p>
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	d. Other compensation to provide significant positive benefits to the restoration and protection of the health and wellbeing of the Waikato and Waipā Rivers.	
Policy 7	Delete Policy 7 and replace it with a policy that requires the duration of consent to reflect the investment in infrastructure, the quality and effectiveness of the consent holder's FEP, the progress towards the short-term numeric water quality values and the possibility of a replacement plan and/or a new allocation regime.	Support
Policy 8(a)	Amend Policy 8(a) as follows: People and communities will need to collectively change practices and activities so as to contribute to achieving the short-term numeric water quality values in Table 3.11-1 for the catchments as a whole	Support
Policy 10	Amend Policy 10 to clearly identify which of the four contaminants controlled by PC1 the preparation required relates to, potentially by reference to Table 3.11-2 or by limiting the information able to be collected from farmers to the four contaminants controlled by PC1.	Support
Policy 19	Delete Policy 19.	Support
Rule 3.11.4.2	Amend Rule 3.11.4.2 to: a. Remove the cross-references to the other rules; b. Extend the time period to the latter Application Date where the use of land is across sub-catchments with different Application Dates; and	Support

	c. Delete the Note.	
Rule 3.11.4.3	<p>Amend Rule 3.11.4.3 to:</p> <ul style="list-style-type: none"> a. Increase the permitted winter stocking rate in 3A(i) to a higher limit that still reflects best practice, or replace the “stock units per hectare” parameter with a more appropriate measure; b. Replace condition 2 with: The minimum farming standards in Schedule C are met. c. Delete condition 5; d. Replace “achieved” with “met” in condition 7(b); and e. Require the FEP to be provided by the Application Date in condition 7(d), and where the use of land is across sub-catchments with different Application Dates the latter of those dates. 	Support
Rule 3.11.4.4	<p>Amend Rule 3.11.4.4 to:</p> <ul style="list-style-type: none"> a. Increase the winter stocking rate in 4A(i) and 4B(i) to a higher limit that still reflects best practice, or replace the “stock units per hectare” parameter with a more appropriate measure; b. Classify the use of land for farming on a property with a Low NLLR as a controlled activity in 4B(ii) where the standards in Schedule C or Part D of Schedule D1 are not met; c. Exclude 4B from condition 2; 	Support

	<p>d. Delete condition 5;</p> <p>e. Amend condition 6 to enable the FEP to be:</p> <ul style="list-style-type: none"> i. prepared in conformance with Schedule D1; ii. certified by a Certified Farm Environment Planner; and iii. provided on the latter date where the use of land is across sub-catchments with different Application Dates. <p>f. Delete matters of control (i), (iii) and (iv).</p>	
(New Rule)	Introduce a new restricted discretionary activity rule for the use of land for farming on a property with a Moderate NLLR where the standards in Schedule C or Part D of Schedule D1 are not met.	Support
Rule 3.11.4.7	<p>Amend Rule 3.11.4.7 to:</p> <ul style="list-style-type: none"> a. Rework 7A as farming in a collective or sector scheme; b. Delete condition 2; and c. Amend condition 4 as follows: A Farm Environment Plan: <ul style="list-style-type: none"> a. has been prepared in conformance with Schedule D2; and b. has been approved <u>certified</u> by a Certified Farm Environment Planner as: <ul style="list-style-type: none"> i. being in conformance with Schedule D2; and 	Support

	<p>ii. providing evidence to demonstrate the Nitrogen Leaching Loss Rate for the property in conformance with Schedule B; and</p> <p>iii. showing actions and mitigations that demonstrate how the farming activity will achieve the goals and principles set out in Part D of Schedule D2; and</p> <p>c. is provided to the Waikato Regional Council by the <u>letter of any relevant Application Date(s)</u> specified in Table 3.11-3; and</p>	
Rule 3.11.4.9(2)	<p>Delete Rule 3.11.4.9(2) and introduce a new discretionary activity rule as follows (with consequential amendments to the grammar in Rule 3.11.4.9):</p> <p>Any change in the use of more than 20ha of land from:</p> <p>a. Woody vegetation to farming; or</p> <p>b. Any land use to dairy farming</p> <p>measured as a cumulative net total from that which was occurring on the property on [the date this rule is made operative].</p>	Support
Schedule A	<p>Amend Schedule A to:</p> <p>a. Replace the date referenced in 4(d) with the date the Schedule is made operative; and</p> <p>b. Amend 4(g) as follows:</p> <p>If more than one property is farmed as part of a group, the addresses and owners of the other properties and the name of that group <u>any applicable sector scheme</u></p>	Support
Schedule B 2(a)	<p>Amend as follows:</p> <p>(a) Delete “to the 2019/20 year” and item (ii)</p>	Support
Schedule B 2(d)	<p>Amend as follows:</p>	Support

	<p>The following records (where relevant to the calculation and auditing of the Nitrogen Leaching Loss Rate) must be retained for the life of the Regional Plan <u>10 years</u> and/or <u>the duration of the relevant consent, whichever is longer</u>, and provided to Waikato Regional Council at its request.</p>	
Schedule B 3	<p>Amend as follows:</p> <p>(a) Amend title to “A Nitrogen Leaching Loss Rate established via alternative model(s) to Overseer;</p> <p>(b) Delete 3(a) and (b) and replace with: An alternative Decision Support Tool may be used provided a suitably qualified and experienced nutrient loss modeler confirms to WRC that the model is fit for purpose.</p> <p>(c) Amend 3(c) to add the ability for the NLLR to be determined by the suitably qualified and experienced nutrient loss modeler;</p> <p>(d) Delete 3(c)(ii) and 3(d);</p> <p>(e) Amend 3(f) in the same manner as 2(f).</p>	Support
Schedule C	<p>Amend as follows:</p> <p>(a) Amend clause 1(b) to remove the use of the undefined term “paddock”, remove the use of the defined term “grazed hectares” and clarify the number of stock in a way that does not require a mathematical calculation and reflects good management practice;</p>	Support

	<p>(b) Delete clause 5, retaining only the exclusions, and move the content of the clause to a new definition of Water bodies for the purpose of Chapter 3.11 amended to clarify it captures farmed animals only consistent with the Decision;¹</p> <p>(c) Delete clauses 6 to 9, or (in the event clause 9 is retained) delete reference to LUC classes and replace with reference to slope over 25°.</p>	
Schedule D1, Part C, clause 3(e)	<p>Amend as follows:</p> <p>(a) The location (and for named waterbodies, the names) of any permanently or intermittently flowing waterbodies on the property including rivers, streams, drains, wetlands, lakes and springs, specifically identifying any waterbodies that meet the criteria for stock exclusion in Schedule C.</p>	Support
Schedule D1, Part D	<p>Amend as follows:</p> <p>(a) Delete clauses 1(c), 1(d), 2, 8(b) and 8(e);</p> <p>(b) Amend clause 4(a) as follows: Actions to minimise sediment loss from critical source areas <u>to waterbodies are prioritized in a plan</u> undertaken as soon as possible in accordance with a plan which prioritises those which are near Schedule C Clause 5 waterbodies.</p> <p>(c) Delete clauses 4(b), 5(a) and (b) or replace references to LUC class 6e, 7 or 8 with references to land where slope exceeds 25°;</p>	Support

¹ Paragraph 1670.

	<p>(d) In clause 4(c) delete “farm scale”;</p> <p>(e) In clauses 6(a) and (b), delete “culverts”;</p> <p>(f) Replace clause 6(b) with a requirement the FEP have a plan to upgrade all existing races, laneways, (culverts, if retained) and bridges within a timeframe that is achievable taking into account the scale of the farming operation and investment required;</p> <p>(g) Amend clauses 6(c) and (d) as follows: New gateways, water troughs, self feeding areas, stock camps, wallows and other sources of sediment, <u>nutrient phosphorus</u> and microbial <u>pathogen</u> loss are located to minimise the risks to surface water quality <u>away from waterbodies.</u></p> <p>Existing gateways, water troughs, self feeding areas, stock camps, wallows and other sources of sediment, <u>nutrient phosphorus</u> and microbial <u>pathogen</u> loss <u>near waterbodies</u> are re-located to minimise the risks to surface water quality within three years after this chapter becomes operative <u>or an alternative timeframe if required taking into account the scale of the farm and level of investment required.</u></p>	
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	(h) Amend clause 7(a) as follows: No cultivation of LUC class 6e, 7 or 8 land, or of any land where slope exceeds 20-25 degrees.	
Schedule D2, Part B, clause 2(b)	Amend as follows: (a) Where appropriate, identify and record the specific, time bound actions and mitigations that will be adopted to ensure the farming activities are consistent with the goals and principles set out in Part D of this schedule, that will result in the greatest reduction in diffuse discharges as practicable.	Support
Schedule D2, Part C, clause 2(e)	Amend as follows: (a) The location (and for named waterbodies, the names) of any permanently or intermittently flowing waterbodies on the property including rivers, streams, drains, wetlands, lakes and springs, and specifically identifying any waterbodies that meet the criteria for stock exclusion in Schedule C;	Support
Schedule D2, Part D	Amend as follows: (a) Amend Goal 1: To manage farming activities in a way that minimises the loss of contaminants <u>losses of nitrogen, phosphorus, sediment and microbial pathogens</u> that potentially affect water quality, from the farm. (b) Amend Goal 2: To minimise nutrient losses <u>losses of nitrogen and phosphorus</u> to water and avoid inefficient nutrient use. (c) Delete Principle 9	Support

	<p>(d) Amend Principle 11: Locate and manage farm tracks, gateways, water troughs, self-feeding areas, stock camps, wallows and other <u>critical</u> source areas of runoff to minimise effects on water quality.</p> <p>(e) Amend Principle 13: Achieve the intended <u>equivalent</u> environmental outcomes of to Schedule C through an alternative approach.</p> <p>(f) Amend Goal 6: To minimise contaminant losses of <u>phosphorus, sediment and microbial pathogens</u> to waterways from soil disturbance and erosion.</p> <p>(g) Amend Principle 15: Minimise soil losses by either retiring <u>steep</u> erosion prone land, and in particular LUC classes 6e, 7 and 8, or by adopting appropriate soil conservation measures and practices.</p> <p>(h) Amend Principle 16: Select paddock areas for growing crops and intensive grazing which minimise possible nitrogen and phosphorus, faecal <u>microbial pathogens</u>, and sediment loss from critical source areas and avoid exacerbating erosion.</p> <p>(i) Amend Principle 18: Maintain or improve the physical and biological condition of soils in order to minimise the movement of sediment, phosphorus and other contaminants <u>microbial pathogens</u> into waterways.</p> <p>(j) Amend Goal 7: To minimise contaminant losses <u>of microbial pathogens</u> to waterways from farm animal effluent.</p>	
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	<p>(k) Amend Principle 20: Have sufficient storage available for farm animal effluent and wastewater and actively manage effluent storage levels to ensure no discharge of contaminants <u>untreated effluent</u> to waterways at all times.</p> <p>(l) Amend Goal 8 to specify the contaminants of interest.</p>	
3.11.6	<p>Amend as follows:</p> <p>(a) Remove all references to “attribute states”;</p> <p>(b) Clarify that progress is to be made towards achieving the water quality values rather than the water quality values being achieved within the 10 year timeframe; and</p> <p>(c) Delete the reference to the nitrogen “load to come”.</p>	Support
Table 3.11-1(a) for sub-catchment 66 (Waikato at Ohakuri)	Amend to remove the unfounded requirement to improve the clarity.	Support
Note below Table 3.11-2	Delete the note below Table 3.11-2.	Support
Table 3.11-3	Delete the first sentence under the heading.	Support
Glossary	<p>Amend as follows:</p> <p>(a) Amend Certified Farm Environment Planner and Certified Farm Nutrient Advisor as follows: ...is a person who has been approved by the Chief Executive of the Waikato Regional Council to provide...</p>	Support

	<p>(b) Amend the definition of Diffuse Discharges to delete the phrase “of contaminants” or to amend the definition to refer to the four contaminants controlled by PC1;</p> <p>(c) Amend the definition of Grazed Hectares to delete “for a period of 10 years from the date the land is retired”;</p> <p>(d) Amend the definition of Property to delete reference to “and is a single operating unit for the purpose of management” or such other relief that better reflects how farming actually occurs on multiple land areas;</p> <p>(e) Amend the definition of slope to address the concerns outlined above; and</p> <p>(f) Add a definition of waterbodies using Clause 5 of Schedule C that continues to exclude ephemeral waterbodies.</p>	
Through-out PC1	Consistently use the defined terms when appropriate to do so, including but not limited to farming rather than farming activities.	Support