In the matter of	the Resource Management Act 1991
And	a submission and further submissions on Proposed Waikato Regional Plan Change 1 – Waikato and Waipā River Catchments (PPC1)
Submitters' Names:	Theland Farm Group Limited ("Theland") Ata Rangi (2015) Limited Partnership ("Ata Rangi") Southern Pastures Limited Partnership ("Southern Pastures")
Submission Numbers:	Theland submitter number: 82022 Ata Rangi submitter number: 74045 Southern Pastures submitter number: 74062
Hearing Topics:	**Block 2** C1: Diffuse discharge management C2: Cultivation, slope and setbacks C3: Certified Schemes C4: Stock exclusion C5: Treaty settlement and Maori ancestral land C6: Urban/point source discharges
Type of Evidence:	Primary
Witness:	Mark Bulpitt Chrisp
Date:	8 May 2019

STATEMENT OF EVIDENCE OF MARK BULPITT CHRISP

EXECUTIVE SUMMARY

1. I have been engaged by Theland Tahi Farming Group Limited ("**Theland Tahi**"), Southern Pastures Limited Partnership ("**Southern Pastures**") and Ata Rangi 2015 Limited Partnership ("**Ata Rangi**") to present planning evidence in relation to particular aspects of Plan Change 1 to the Waikato Regional Plan ("**PC1**") being addressed as part of Block 2. Except where I am discussing one of these parties in particular, I will refer to them collectively in my evidence as "my clients".

2. The s42A report recommends that the core aspects of Rule 3.11.5.7 be relocated to, and to become conditions within, Rules 3.11.5.3 and 3.11.5.4 (and other rules which are not relevant to my clients' activities). Failure to comply with those conditions then results in Non-complying Activity status under an amended Rule 3.11.5.7. The aspect of these changes which is of greatest concern is the fact that failure to comply with Condition 5b of Rule 3.11.5.3 or Condition 7 of Rule 3.11.5.4 renders not only the land use change component of a farming activity a Non-complying Activity, but the entire farming activity becomes a Non-complying Activity (i.e. "the use of land for farming" to quote the rules).

3. Based on the current policy framework in PC1, it is unlikely that a Non-complying Activity resource consent application will be able to pass either of the threshold tests in s104D of the Resource Management Act 1991 ("**RMA**"). With consent being declined, such an outcome would mean that not only the land use change component of the farming activity would become unlawful, but the balance of the farming operation that was lawfully established prior to 22 October 2016, and which could have been in existence for decades, suddenly becomes unlawful as well and would have to cease operation.[1]

4. Considering Rule 3.11.5.7 in relation to s32 of the RMA, a Non-complying Activity resource consent being required for "the use of land for farming" (in relation to lawfully established farming activities) is, in my opinion, excessive and cannot be justified in terms of natural justice,

[1] Noting, however, that a Certificate of Compliance lodged prior to 22 October 2016 (and obtained) for land use change preserves the position of the holder of such a certificate.

cost, efficiency and the perverse (and unintended) outcomes that are likely to arise.

5. In the interests of efficiency, a fundamental consideration under s32 of the RMA, I recommend that the rules in PC1 provide a 'permitted pathway' for farming activities (i.e. "the use of land for farming") by way of a Permitted Activity rule which requires compliance with performance standards / conditions. Any matters that are considered to be 'site-specific' or require the exercise of some discretion, can form part of the preparation and certification of a Farm Environment Plan ("**FEP**") which, in turn, can be a performance standard / condition of a Permitted Activity rule. At most, any such rule(s) should be a Controlled Activity (if the Hearing Panel is not convinced that all requirements can be adequately specified as Permitted Activity performance standards / conditions).

6. The rules need to provide a pathway for land use change to be able to occur (either as a Permitted Activity or by way of a resource consent application) where it can be demonstrated that there will not be unacceptable adverse effects on the environment. This includes land use change that has occurred, or is proposed, in the circumstances where the proposal can demonstrate the ability of the sub-catchment to achieve the Freshwater Objectives, Targets and Limits (Total Nitrogen and Total Phosphorus) in Table 3.11-1.

INTRODUCTION

7. My full name is Mark Bulpitt Chrisp. I am a Director and a Principal Environmental Planner in the Hamilton Office of Mitchell Daysh Ltd, a company which commenced operations on 1 October 2016 following a merger of Mitchell Partnerships Ltd and Environmental Management Services Ltd (of which I was a founding Director when the company was established in 1994 and remained so until the merger in 2016). I am currently serving as the Chairman of the Board of Mitchell Daysh Ltd.

8. In addition to my professional practice, I am an Honorary Lecturer in the Department of Geography, Tourism and Environmental Planning at the University of Waikato. I am also the Chairman of the Environmental

Planning Advisory Board at the University of Waikato, which assists the Environmental Planning Programme in the Faculty of Arts and Social Sciences in understanding the educational, professional and research needs of planners.

9. I have a Master of Social Sciences degree in Resources and Environmental Planning from the University of Waikato (conferred in 1990) and have nearly 30 years' experience as a Resource Management Planning Consultant.

10. I am a member of the New Zealand Planning Institute, the New Zealand Geothermal Association, and the Resource Management Law Association.

11. I am a Certified Commissioner under the Ministry for the Environment's 'Making Good Decisions' course.

12. I have appeared as an Expert Planning Witness in numerous Council and Environment Court hearings, as well as several Boards of Inquiry (most recently as the Expert Planning Witness for the Hawke's Bay Regional Investment Company Ltd's proposed Ruataniwha Water Storage Scheme).

13. I have undertaken a substantial amount of work within the rural sector (and related processing and manufacturing activities / industries) over the last 25 years. This has included:

    a) Advising Wairakei Pastoral Ltd ("**Wairakei Pastoral**") in the early stages of its development including involvement in various district and regional planning processes;

    b) Advising Ata Rangi including securing various Resource Consents and Certificates of Compliance;

    c) Securing Water Permits and Certificates of Compliance for various other dairy farming operations including Waikino Station (a sheep milking operation);

d) Securing a Land Use Consent for a kiwifruit packhouse on Gorton Road, Karapiro.

e) Undertaken planning work in relation to all of Fonterra Limited's dairy manufacturing sites in the Northland, Auckland, Waikato and Bay of Plenty regions. This has included re-consenting existing dairy manufacturing operations and/or associated spray irrigation of wastewater onto farm land (e.g. the Hautapu, Reporoa and Edgecumbe sites, which involved nutrient management considerations) and major capacity expansion projects (e.g. the Te Rapa Capacity Expansion and Co-generation Plant Project).

14. In addition to my professional practice, I have practical experience working as a farmer on our former family farm (Ben Lomond Station – a 3,000 acre sheep and drystock farm), working for another farmer (sheep, drystock and goats) and in a shearing gang during university holidays, and running my own small farms from 1990 to 2010 (sheep, drystock and horses).

15. I assisted Ata Rangi in relation to the preparation of its submission on PC1. I also assisted Ata Rangi and Theland Tahi in relation to the preparation of their further submissions on PC1.

Code of Conduct

16. Although this is a Council hearing, I have read the Environment Court's Expert Code of Conduct in its 2014 Practice Note and agree to comply with it. My qualifications as an expert are set out above. I confirm that the issues addressed in this statement of evidence are within my area of expertise.

Scope of Evidence

17. I have been engaged by Theland Tahi, Southern Pastures and Ata Rangi to present planning evidence in relation to particular aspects of PC1 being addressed as part of Block 2. Except where I am discussing one of these parties in particular, I will refer them collectively in my evidence as "my clients".

18. Given that this is the first time I will present evidence to the PC1 Hearing Panel, my evidence will commence with a brief background and an outline of my approach to advising my clients in the rural sector and, in my opinion, how PC1 should respond to and deal with those undertaking rural based activities.

19. My evidence then focuses on the rules in PC1 and the proposed amendments to those rules recommended in the s42A report.

20. Where appropriate and relevant, my evidence will reference and rely on the evidence of Dr Debbie Care (Independent Environmental Consultant).

BACKGROUND AND APPROACH

21. In 2005, I was engaged by Wairakei Pastoral to assist the company address a range of resource management issues associated with the on-going management and development of the company's substantial land holdings in the Taupo District (amounting to approximately 26,000 hectares). As part of that work, I undertook a number of site visits to different parts of the farming operations. This included a site visit to one of the farms boarding the Waikato River that had a 50m wide setback from the river that was fenced and fully planted with native species for the length of the farm adjoining the river. This approach was applied consistently to Wairakei Pastoral's other farms adjoining the Waikato River. This contrasted with the farm on the opposite side of the river that had no fencing along the margin of the Waikato River and some of the cattle were standing in the river. This situation (along with a wide range of other more environmentally advanced aspects of Wairakei Pastoral's farming systems) triggered the rhetorical question as to which of these two types of farming operations should be encouraged and provided for in a regulatory sense?

22. Moving forward in time, I was engaged by Ata Rangi in early 2015 when it purchased its land holdings at Whakamaru and Maraetai (amounting to 5,464 hectares) to assist with resource management issues associated with the development of its properties for dairy farming purposes. The owners and management of Ata Rangi adopted a strong

environmental ethos whereby they were determined to ensure that everything they did was best practice.[2] This has included:

a) The engagement of an Ecologist to prepare a State of the Environment Baseline Report which describes the nature, extent and quality of the ecological resources associated with the Whakamaru and Maraetai Blocks, and an Ecological Management Plan ("**EMP**") to guide the development of the properties including management practices to protect and/or manage ecological areas or features. The EMP also included a programme of ongoing ecological monitoring.

b) Fencing off rivers (including the Waikato River), streams, lakes, wetlands and Significant Natural Areas.

c) Planting riparian margins, including weed and predator control.

d) Installing earth bunds along the downhill edges of paddocks to avoid sediment and/or effluent runoff (including to assist with minimising phosphorus entering water bodies).

e) Retiring and permanently planting the steeper parts of the properties.

f) Adopting water efficient designs and practices within the dairy sheds (to minimise water usage), installing weeping walls to manage effluent solids, and carefully managing the irrigation of effluent (including the use of Halo software systems).

g) Using Overseer to assist with the management of nutrient inputs and outputs.

h) Ensuring that everything undertaken was 100% lawful under the Resource Management Act 1991 ("**RMA**") and appropriately documented as such. This included securing all necessary resource consents and certificates of compliance (the latter in

[2] I have not undertaken site specific resource management work for Theland Tahi or Southern Pastures in relation to their respective land holdings, but the owners and management of those companies share the same environmental ethos of adopting best practice exhibited by Ata Rangi.

relation to key aspects of the farming operation that were permitted activities).

23. Based on the above experience, before considering PC1 in relation to the relevant matters in s32 of the RMA (discussed later in my evidence), my approach to PC1 is to first consider whether it promotes best practice and supports the participants within the rural sector that have a proven track record of adopting and implementing best practice.

24. It would, in my opinion, be a perverse outcome if those participants in the rural sector that have adopted best practice (including the parties I am presenting evidence on behalf of today) are treated more harshly than others who have not made the same level of commitment and investment in environmental performance. This includes proposed rules which potentially penalise those who have undertaken land use change more recently than others (noting that such land use change has occurred as a permitted activity within the jurisdiction of Waikato Regional Council and the relevant territorial authority) and which are not based on actual environmental effects.

RULES IN PC1

Rule 3.11.5.7

25. As notified, Rule 3.11.5.7 reads as follows:

> **Rule 3.11.5.7 - Non-Complying Activity Rule – Land Use Change**
>
> Notwithstanding any other rule in this Plan, any of the following changes in the use of land from that which was occurring at 22 October 2016 within a property or enterprise located in the Waikato and Waipa catchments, where prior to 1 July 2026 the change exceeds a total of 4.1 hectares:
>
> 1. Woody vegetation to farming activities; or
> 2. Any livestock grazing other than dairy farming to dairy farming; or
> 3. Arable cropping to dairy farming; or
> 4. Any land use to commercial vegetable production except as provided for under standard and term g. of Rule 3.11.5.5
>
> is a non-complying activity (requiring resource consent) until 1 July 2026.
>
> **Notification:**
> Consent applications will be considered without notification, and without the need to obtain written approval of affected persons, subject to the Council being satisfied that the loss of contaminants from the proposed land use will be lower than that from the existing land use.

26. I consider that the notified version of Rule 3.11.5.7 is problematic and difficult to apply in relation to a land use which, as at 22 October 2016, was already fundamentally changing in accordance with resource consents and/or Permitted Activity rules. Concerns in relation to the rule were exacerbated in the circumstances where multi-million dollar investments had been committed to a particular course of action (e.g. a change of land use from forestry to farming) prior to the prospect of a rule like Rule 3.11.5.7 being developed, made public and ultimately notified as part of PC1.

27. My clients variously submitted and/or further submitted on Rule 3.11.5.7 seeking that it be amended, including making it a Restricted Discretionary Activity for farms which had undertaken any level of land use change provided that it could still fall within the 75th percentile based on a 5-year rolling average. The wording of Rule 3.11.5.7 sought by my clients is set out in **Attachment A** of my evidence.

28. The key reasons for advancing this relief sought are:

a) The rule is not the most appropriate to implement the policies, achieve the objectives of PC1 or to give effect to the Vision and Strategy and National Policy Statement for Freshwater Management 2014 (updated in 2017) ("**NPS-FM**"). The economic analysis on which it is based is flawed as it does not consider the costs to those landowners who are part way through a conversion programme in which millions of dollars have been invested.

b) The rule does not provide flexibility to implement land use change which may result in a net benefit to the catchment. There is no incentive to re-purpose land in pasture in light of investment and financial commitment to date, and PC1 contains no proposals for funding landowners to "retire" farm land or to cease conversion and re-plant into forest. If re-forestation is an intended outcome of PC1 it should contain appropriate mechanisms to achieve this outcome rather than the threat of enforcement action or prosecution.

c) The rule does not provide for flexibility for land use change activities which are based on land use suitability considerations and which

could lead to better outcomes from an effects perspective (e.g. retiring areas of land such as steeper high areas, in exchange for conversion of suitable land into pasture). While the Nitrogen Reference Point ("**NRP**") may be cited as an effective proxy for enabling this land use change, it is appropriate that a specific rule is included. Criteria for the rule could include a requirement that the proposed land use change does not undermine the NRP mechanism for the property/enterprise.

d) Relevantly, the characteristics of the upper Waikato sub-catchments mean that ceasing activities will have no material impact on status of sub-catchment.

e) The rule should be amended to allow for some limited conversion activities to be completed, provided there is a commitment to reducing diffuse discharges of nutrients, in accordance with the farming activity rules and offset mitigation techniques are recognised and provided for in PC1.

f) The amendments which are proposed are consistent with and implement the staged approach to changes in land use management which are reflected in the objectives and policies, in particular, Objective 4.

29. An acceptable alternative is the relief sought in the submission by Wairakei Pastoral, as discussed and set out in the evidence of Dwayne Connell-McKay on behalf of Wairakei Pastoral.

30. The changes to Rule 3.11.5.7 recommended in the s42A report are of significant concern to my clients. I share those concerns, which are explained in the following paragraphs.

31. The s42A report recommends that the core aspects of Rule 3.11.5.7 be relocated to, and to become conditions within, Rules 3.11.5.3 and 3.11.5.4 (and other rules which are not relevant to my clients' activities). Failure to comply with those conditions then results in activities becoming a Non-complying Activity under an amended Rule 3.11.5.7. The aspect of these changes which is of greatest concern is that failure

to comply with Condition 5b of Rule 3.11.5.3 or Condition 7 of Rule 3.11.5.4 renders not only the land use change component of a farming activity a Non-complying Activity, but the entire farming activity becomes a Non-complying Activity (i.e. "the use of land for farming" to quote the rules).

32. Recognising that farming is a dynamic activity, that scenario could simply arise because a dairy farmer was growing more than 4.1 hectares of maize (a form of arable cropping under clause 3 of the notified version of Rule 3.11.5.7[3]) on 22 October 2016 and then decides to not replant the maize the following or subsequent years (returning those paddocks to pasture for dairy grazing – as they were before the maize crop was planted). Maize is typically sown in early Spring before 22 October. The following graph shows that planting a maize crop before 22 October generally produces a higher yield.

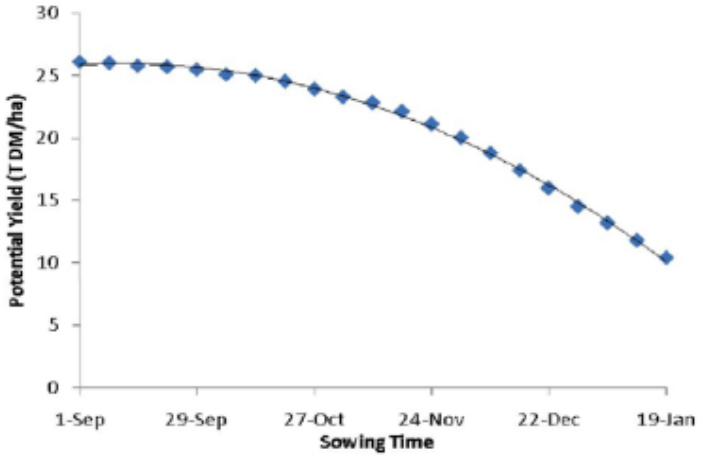

Figure 1 - Maize Sowing Time (Source: Dairy NZ website[4])

33. Rule 3.11.5.7 making "the use of land for farming" a Non-complying Activity (due to non-compliance with the land use change condition) means that the entire farming operation would need to pass one of the threshold tests in section 104D of the RMA for the Waikato Regional Council ("**WRC**") to have jurisdiction to consider and possibly grant consent. Any aspect of the farming operation (not just the land use

[3] Now part of Condition 5b of Rule 3.11.5.3 and Condition 7 of Rule 3.11.5.4 if the recommendations in the s.42A report are accepted.
[4] https://www.dairynz.co.nz/feed/crops/maize-crop-1/

change component) that was considered to have a 'more than minor' adverse effect would mean that the application could not pass the first of the two alternative tests. Leaving aside all other aspects of any typical farming operation (which could well be seen as having more than minor effects), the land use change component is likely to be considered (by WRC) to fail the 'no more than minor' test (s104(1)(a) of the RMA), particularly in the light of the policy position in PC1 (which will influence any assessment as to the magnitude and significance of any environmental effects).

34. The policy position set out in Policy 6 (now in Policy 1 if the recommended changes to the policies in the s42A report are accepted) would mean that a resource consent application for a Non-complying Activity due to any land use change involving more than 4.1 hectares is unlikely to pass the second alternative threshold test (s104(1)(b) of the RMA) for Non-complying Activities.

35. The deletion of the 'non-notification clause' at the end of Rule 3.11.5.7 increases the likelihood of third-party participation in the processing of any Non-complying Activity resource consent application and an associated increase in cost and likelihood of consent being declined. I consider that the non-notification clause should be retained.

36. With consent being declined, such an outcome would mean that not only the land use change component of the farming activity would become unlawful, but the balance of the farming operation that was lawfully established prior to 22 October 2016, and which could have been in existence for decades, suddenly becomes unlawful and would have to cease operation.[5] What happens then? Declining the consent cannot impose any positive obligation on a landowner to undertake any alternative land use (e.g. a dairy farm being converted to forestry) and any such alternative land uses may be beyond the experience and expertise of the land owner.

[5] As above, noting that a Certificate of Compliance lodged prior to 22 October 2016 (and obtained) for land use change preserves the position of the holder of such a certificate.

37. Some District Plans include rules where a resource consent is required for the planting of exotic forestry in parts of the Rural Zone.[6] On that basis, there can be no certainty that any alternative land use is able to occur (other than the land not being used for productive purposes – left 'fallow' growing weeds). As discussed in the evidence of Dr Care, if gorse ends up growing on the land, it will leach up to 64 kgN/ha/year which is a higher rate of leaching than many pastoral farming operations.

38. Considering Rule 3.11.5.7 in relation to s.32 of the RMA (discussed in more detail in the next section of my evidence), a Non-complying Activity resource consent being required for "the use of land for farming" (in relation to lawfully established farming activities) is, in my opinion, excessive and cannot be justified in terms of natural justice, cost, efficiency and the perverse outcomes that are likely to arise.

39. The s32 Evaluation Report supporting PC1 considered the following options for managing (i.e. restricting) land use change[7]:

    1. Existing Waikato Regional Plan policies, rules and methods; and

    2. Controls on changes in land use.

40. Option 1 was never a realistic option to achieve the objectives of PC1 (it was the existing regime that became operative prior to the Vision and Strategy being developed) and could only be regarded as a baseline for comparison. Option 2 only considered the implementation of a Non-complying Activity rule applying generically across the entire Waikato and Waipa catchments. There was no consideration of other, more efficient and effects-based ways of achieving the objectives of PC1 (such as a Permitted Activity rule with performance standards / conditions to be achieved, or the requirement for a resource consent with a different RMA status).

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[6] E.g. Rule 25.4.1.1(m) in the Waipa District Plan classifies "Planting of 2ha or more of single species exotic forestry per holding" a Restricted Discretionary Activity or a Non-complying Activity in various parts of the Rural Zone.

[7] Page 184 of the Section 32 Evaluation Report.

41. It is also difficult to justify a Non-complying Activity rule for the use of land for farming (or even just in relation to the land use change component of the rules being generically applied across the Waikato the Waipa catchments) from an environmental effects perspective. Rule 3.11.5.7 (or the key aspects of it forming conditions of other rules) should not be generically applied across the entire area covered by PC1. It is too blunt an instrument and not justified (in terms of s32 of the RMA) in relation to actual environmental effects of the farming activities undertaken by my clients.

42. As discussed in the evidence of Dr Care, the 80-year targets in the Upper Waikato River Catchment are already being achieved, including with the land use change that has been undertaken by various parties in recent years (including my clients). Furthermore, as noted by Dr Care (in reference to the evidence presented by Wairakei Pastoral) there is no 'load to come'.

43. In my opinion, the rules need to provide a pathway for land use change to be able to occur (either as a Permitted Activity or by way of a resource consent application) where it can be demonstrated that there will not be unacceptable adverse effects on the environment. This includes land use change that has occurred, or is proposed, in the circumstances where the proposal can demonstrate the ability of the sub-catchment to achieve the Freshwater Objectives, Targets and Limits (Total Nitrogen and Total Phosphorus) in Table 3.11-1.

Rules 3.11.5.3 and 3.11.5.4

44. The s42A report recommends that Rule 3.11.5.3 be changed from being a Permitted Activity rule to a Restricted Discretionary Activity rule. It also recommends that Rule 3.11.5.4 be changed from a Controlled Activity rule to a Restricted Discretionary Activity rule. These changes mean that there would be no permitted pathway or otherwise any certainty of securing a resource consent (i.e. Controlled Activity status) for any ongoing dairy farming activities.

45. As a result of an assessment under s.32 of the RMA (presented in **Attachment B** of my evidence), and particularly in the interests of

efficiency (a fundamental consideration under s.32 of the RMA), I recommend that the rules in PC1 provide a 'permitted pathway' for farming activities (i.e. "the use of land for farming") by way of a Permitted Activity rule which requires compliance with performance standards / conditions. At most, any such rules should be Controlled Activities (if the Hearing Panel is not convinced that all requirements can be adequately specified as performance standards / conditions).

46. In my opinion, there is no reason why Rules 3.11.5.3 and 3.11.5.4 need to be Restricted Discretionary Activities. Moving from Permitted and/or Controlled Activity status to Restricted Discretionary Activity status is only necessary if WRC wishes to have the ability to decline a resource consent application. As far as I am aware, none of the documentation leading up to the notification of PC1, and no aspect of PC1 itself, has ever advanced a position where WRC would seek the ability to shut down lawfully established farming businesses and, in fact, such an outcome is contrary to the policies of PC1 (discussed below). I do not think it is credible or realistic to contemplate a scenario where the introduction of a rule relating to existing and well-established farming business activities, many having been operated for many generations, could be declined a resource consent and have to cease operation. This is particularly the case in the circumstances whereby they have been lawfully established as Permitted Activities in accordance with the regulatory regimes put in place by resource management agencies such as WRC and territorial authorities.

47. To illustrate this situation somewhat 'closer to home' (and leaving aside any ability to rely on existing use rights), imagine as lawyers, planners and technical experts if a rule was introduced into district plans requiring our pre-existing professional practices to secure a land use consent in the circumstances where that application could be declined and our careers ended. That is the very situation that the rules in PC1, as recommended in the s42A report, create for the rural sector.

48. In my opinion, the focus of any rules should be on *how* existing farming activities are undertaken in the future. In order to meet the requirements of the Vision and Strategy, this means that the rules

should focus on compliance with performance standards / conditions as Permitted Activities, not creating an opportunity to close down lawfully established businesses. It is only a failure to comply with effects-based performance standards that should result in the need for a resource consent. The approach that I am recommending is consistent with Policy 5 as recommended in the s42A report, particularly clause c of the policy which states:

> The rate of change will need to be staged over the coming decades to minimise social, economic and cultural disruption and enable innovation and new practices to develop;

49. All of the matters listed as matters of discretion at the end of Rules 3.11.5.3 and 3.11.5.4:

a) are capable of being the subject of objectively determined conditions within the rules specifying the outcome required; or

b) can form part of the requirements relating to the preparation of a Farm Environment Plan ("**FEP**"), particularly any aspects that need to be site-specific and/or require some level of discretion, the completion and certification of which can be a condition of the rules; or

c) otherwise, do not need to be specified as matters of discretion as they are an implicit part of determining any resource consent application (e.g. determining the consent term and the timeframe and circumstances in which a consent can be reviewed), if indeed a consent is required.

50. A final aspect in relation to the efficiency (or more particularly the inefficiency) of the rules that needs to be considered is the prospect of every farming activity over 4.1 hectares requiring a resource consent. This is likely to result in a backlog of applications that will take years to process. By way of example, Variation 6 to the Waikato Regional Plan (relating to water quantity) was promulgated by WRC and eventually approved by the Environment Court approximately 10 years ago. Variation 6 gave rise to the need for most dairy farming activities to

apply for a resource consent to take water for dairy shed washdown and milk cooling purposes. After 10 years, WRC still has a significant backlog of applications (advanced under the rules in Variation 6) awaiting processing.

Mark Chrisp
8 May 2019

Attachment A – Relief Sought

(as set out in the primary submission by Ata Rangi)

Retain the Permitted Activity status for Rule 3.11.5.3.

Retain the Controlled Activity status for Rule 3.11.5.4 (although it would preferable for Rule 3.11.5.4 to be a Permitted Activity rule on the basis of the analysis presented in Attachment B and there being no reason why those within a Certified Industry Scheme should have a more permissive RMA status than those who are not part of any such scheme).

Amend Rule 3.11.5.7 and add a new Restricted Discretionary Activity Rules 3.11.5.7A and 3.11.5.7B as follows:

> Rule 3.11.5.7A Restricted Discretionary Activity Rule – Land Use Change
>
> Notwithstanding any other rule in this Plan, in order to achieve a staged approach to change, any of the following changes in the use of land from that which was occurring at 22 October 2016 within a property or enterprise located in the Waikato and Waipa catchments, including in circumstances where the use of land included the ongoing conversion of land from production forestry to farming activity (including arable cropping), AND where the ongoing conversion of land from production forestry to farming activity was commenced prior to 1 June 2015 are restricted discretionary activities (requiring resource consent):
>
> 1. Woody vegetation to farming activities; or
> 2. Any livestock grazing other than dairy farming to dairy farming; or
> 3. Arable cropping to dairy farming.
>
> Subject to the following standards and terms:
>
> a) The 5-year rolling average does not exceed the nitrogen reference point, or where nitrogen reference point has not been calculated, the average nitrogen loss for the property or enterprise over the 5 year period ending 30 June of the preceding financial year that the application is made.
> b) Cattle, horses, deer and pigs are excluded from water bodies in accordance with Schedule C.
>
> Waikato Regional Council restricts its discretion over the following matters:
>
> i. Cumulative effects on water quality of the catchment of the Waikato and Waipa Rivers.
> ii. The diffuse discharge of nitrogen, phosphorus, sediment and microbial pathogens.
> iii. The need for and the content of a Farm Environment Plan.
> iv. The term of the resource consent.
> v. The monitoring, record keeping, reporting and information provision requirements for the holder of the resource consent.
> vi. The time frame and circumstances under which the consent conditions may be reviewed.

Rule 3.11.5.7B Restricted Discretionary Activity Rule – Land Use Change

Notwithstanding any other rule in this Plan, in order to achieve a staged approach to change, any of the following changes in the use of land from that which was occurring at 22 October 2016 within a property or enterprise located in the Waikato and Waipa catchments, where prior to 1 July 2026 the change exceeds a total of 4.1 hectares are restricted discretionary activities (requiring resource consent):

1. Woody vegetation to farming activities; or
2. Any livestock grazing other than dairy farming to dairy farming; or
3. Arable cropping to dairy farming;
4. Any land use to commercial vegetable production except as provided for under standard and term g. of Rule 3.11.5.5.

Subject to the following standards and terms:

a) The 5-year rolling average does not exceed the nitrogen reference point, or where nitrogen reference point has not been calculated, the average nitrogen loss for the property or enterprise over the 5 year period ending 30 June of the preceding financial year that the application is made.
b) Cattle, horses, deer and pigs are excluded from water bodies in accordance with Schedule C.

Waikato Regional Council restricts its discretion over the following matters:

i. Cumulative effects on water quality of the catchment of the Waikato and Waipa Rivers.
ii. The diffuse discharge of nitrogen, phosphorus, sediment and microbial pathogens.
iii. The need for and the content of a Farm Environment Plan, including the use of offset mitigation measures.
iv. The term of the resource consent.
v. The monitoring, record keeping, reporting and information provision requirements for the holder of the resource consent.
vi. The time frame and circumstances under which the consent conditions may be reviewed.

Amend existing Rule 3.11.5.7 as follows:

Rule 3.11.5.7 – Non-complying activity rule – Land Use Change

The following activities which do not comply with the standards and terms of rule(s) 3.11.5.7A [or 3.11.5.7B] are non-complying activities:
Changes in the use of land from that which was occurring at 22 October 2016 within a property or enterprise located in the Waikato and Waipa catchments, where prior to 1 July 2026 the change exceeds a total of 4.1 hectares…

AND INCLUDE: Any appropriate or consequential amendments to the rules set out above, or any other rule in PPC1 in order to address the reasons for submission and/or ensure drafting consistency.

ALTERNATIVELY:

Adopt the amendments to the rules set out in the Block 2 evidence of Dwayne Connell-McKay on behalf of Wairakei Pastoral.

Attachment B – Section 32 Analysis Summary

The objectives of PC1 were the subject of the Block 1 Hearings (and are therefore not analysed in the following). The following s32 analysis focuses on the options (specifically the nature of the rules) to achieve the objectives in the most appropriate way (i.e. the task required under s32(1)(b) of the RMA including the requirements of s32(2) and (3)).

In terms of s32(1)(b)(i), the following are considered to be the "reasonably practicable options for achieving the objectives":

- A Permitted Activity Pathway – where a Permitted Activity rule sets out performance standards / conditions that must be achieved including the preparation and certification of a Farm Environment Plan ("**FEP**"), wherein any 'site- specific' matters or matters that require the exercise of some discretion, can form part of the preparation and certification of a FEP.
- A Resource Consent Pathway (including variations regarding the status of activities – Controlled, Restricted Discretionary, Discretionary, or Non-complying Activity status).

Section 32 Evaluation Matters	**Permitted Activity Pathway**	**Resource Consent Pathway**
Section 32(1)(b)(ii) – assessing the efficiency and effectiveness of the provisions in achieving the objectives, including: (a) identify and assess the benefits and costs of the environmental, economic, social, and cultural effects that are anticipated from the implementation of the provisions, including the opportunities for— (i) economic growth that are anticipated to be provided or reduced; and (ii) employment that are anticipated to be provided or reduced; and (b) if practicable, quantify the benefits and costs referred to in paragraph (a); and (c) assess the risk of acting or not acting if there is uncertain or insufficient	<u>Efficiency and Effectiveness</u> Significantly more efficient in terms of time and cost compared with the Resource Consent Pathway. Highly effective in terms of the end result. <u>Benefits</u> Clarity and certainty in terms of what is expected and required.	<u>Efficiency and Effectiveness</u> Time-consuming and costly. Highly effective in terms of the end result. <u>Benefits</u> Potentially allows a greater level of scrutiny (but, in reality, the same level of scrutiny can be applied in relation to the preparation of a FEP as part of a Permitted Activity rule). Some parties may see the ability to decline a consent as a benefit (while others would see this as an unintended outcome of PC1 that is contrary to the objectives of PC1).

information about the subject matter of the provisions.	<u>Costs</u> Significantly less costs compared with the Resource Consent Pathway (only involves the costs associated with the preparation of a FEP). <u>Risk of Acting or Not Acting</u> The risk of acting is low on the basis that a Permitted Activity rule would include performance standards to address the environmental effects to be addressed in PC1. The risk of not acting is low on the basis that farming activities would be controlled by way of a resource consent application process (if the Permitted Pathway is not pursued).	<u>Costs</u> Significantly greater costs compared with the Permitted Pathway (estimated to be somewhere between $25,000 – $50,000 or more per application depending on how many technical experts are required, and assuming the application is processed on a non-notified basis) – see Note 1. <u>Risk of Acting or Not Acting</u> A significant risk is that lawfully established farming activities will not be able to secure a resource consent and will have to cease operation, which would have significant economic and social effects. A consequential risk is that the resulting use of the land could have increased nitrogen leaching (e.g. growing gorse). The risk of not acting is low on the basis that farming activities would be controlled by way of a Permitted Activity rule including performance standards to address the environmental effects to be addressed in PC1.
Section 32(1)(b)(iii) – summarising the reasons for deciding on the provisions.	Based on the above, the Permitted Activity Pathway is the preferred option (with a resource consent only being required due to a failure to comply with the performance standards / conditions of the Permitted Activity rule). The Permitted Activity Pathway is significantly more efficient in terms of time and cost and can achieve the same outcomes as a resource consent process (apart from shutting down farming businesses – which, it is understood, is not an intended outcome of PC1 in any event). The costs associated with a resource consent application process would be better spent on actual environmental improvements ‘on the ground’.	

Note 1: Resource Consent Application Costs

As an example, the costs associated with a resource consent application process for a Non-complying Activity could be as follows:

- Preparation of application and AEE $15,000
- Technical Expert(s) $15,000
- WRC Consent Processing $10,000
- Total $40,000 + GST

This assumes non-notification and no hearing required. No allowance has been included for consultation with third parties.