

IN THE MATTER

of the Resource Management Act 1991

AND

IN THE MATTER

The Proposed Waikato Regional Plan Change 1 –
Waikato and Waipa River Catchments (Healthy
Rivers)

(Hearing Block 3)

BETWEEN

New Zealand Institute of Primary Industry
Management (NZIPIM)- Waikato Branch
(Submitter ID: 73558)

AND

Waikato Regional Council

STATEMENT OF PRIMARY EVIDENCE OF LEE ANTONY MATHESON

**ON BEHALF OF THE NEW ZEALAND INSTITUTE OF PRIMARY
INDUSTRY MANAGEMENT- WAIKATO BRANCH**

5 July 2019

Contents

1. Executive Summary	3
2. Scope of evidence.....	4
3. Introduction.....	5
4. Background	6
5. Definition of a Certified Farm Environment Planner (CFEP)	7
6. Auditing	12
7. Altering FEPs	15
8. Dispute resolution.....	17
9. Conclusions.....	17
Appendix 1: Summary table of roles and responsibilities	19

1. Executive Summary

- 1.1. In order for farm environment plans (FEPs) and nitrogen reference point (NRPs) to meet the objectives of the Waikato Regional Council's Proposed Waikato Regional Plan Change 1 – Waikato and Waipa River Catchments (Proposed Plan Change) they need to be comparable, high quality and completed by suitably qualified people by the desired timelines. These need to pass moderation and be auditable with clear parity between those FEPs and NRPs undertaken within certified industry schemes (CIS) and out of it.
- 1.2. It is recommended that, if implemented, the national FEP certification scheme [which is currently in the final phase of development] replaces the minimum requirements included in the CFEP definition. However, if there is a desire to include an alternative pathway then it is recommended that the definition of a CFEP is as follows.
- 1.3. **Certified Farm Environment Planner:** is a person certified by the Chief Executive Officer of the Waikato Regional Council (or a delegate of the Chief Executive Officer as approved by the Chief Executive Officer of the Waikato Regional Council) and has a minimum the following qualifications and experience:
 - a. Three years' relevant experience in agricultural and horticultural farm systems; and
 - b. A Certificate of Completion in Advanced Sustainable Nutrient Management in New Zealand Agriculture from Massey University or an equivalent advanced training or a tertiary qualification in sustainable nutrient management; and
 - c. Three years' experience in soil conservation and sediment management; or
 - d. A certificate in Farm Environment Planning under a national FEP certification scheme which is approved by the Waikato Regional Council Chief Executive Officer.

And agrees to follow the procedures and guidelines set out by Waikato Regional Council and audits of the Certified Farm Environment Planner's work by Waikato Regional Council show that the Planner is preparing and/or approving Farm Environment Plans in accordance with the procedures and guidelines.

Note: Certified Farm Environment planners will be listed on the Waikato Regional Council's website.

- 1.4. I agree with the Section 42A Report for Block 3 that recommends that compliance auditing occurs by Waikato Regional Council staff, not CFEPs. This is important as CFEPs are not warranted enforcement officers under the RMA, and the same professional should not provide advice and then undertake compliance monitoring.
- 1.5. I agree with the Section 42A Report for Block 3 recommendations that the Waikato Regional Council operate an audit programme, where it will audit CFEPs performance on a regular basis for quality control purposes [essentially professional moderation]. This is crucial to the success of the use of FEPs and CFEPs within the Proposed Plan Change. While there is limited detail on this audit programme it must:
 - 1.5.1. Be carried out for CFEPs both within and outside of Certified Industry Schemes.

- 1.5.2. The CFEPs undertaking audit reviews of FEPs should also be explicitly included in the Waikato Regional Council's auditing of CFEP programme. This will ensure quality and consistency of the FEP reviews. Currently they are not explicitly included.
- 1.5.3. This audit programme is robust and transparent. Ideally this will be undertaken by Waikato Regional Council staff or independent professionals, who have at least the same level of competency as CFEPs.
- 1.6. I note that the Section 42A report for Block 3 provides more information on the process by which FEPs can be altered. While the sentiment and general process of this is sufficient to balance competing demands for flexibility and certainty, an alternative process is proposed which will ensure that CFEPs are able to maintain their professional indemnity insurance, there is some flexibility for farmers and certainty for communities and Waikato Regional Council.
- 1.7. The alternative process would include the following key steps:
 - 1.7.1. The FEP is signed off by a CFEP, the CFEP is responsible for the quality of the FEP at this point. The farmer is still responsible for compliance and implementing the FEP.
 - 1.7.2. The farmer (or other person on their behalf) can make changes to the FEP. These changes must be notified to the Waikato Regional Council in writing. At the point when any changes are made to the FEP, the CFEP who signed off the FEP is no longer responsible for the quality of the FEP.
 - 1.7.3. The Waikato Regional Council is responsible for informing the farmer if the changes made to the FEP mean the revised FEP needs to be signed off by a CFEP. The Waikato Regional Council will need to decide and provide information on what types of changes are likely to necessitate the FEP being resigned off by a CFEP.
 - 1.7.4. The Waikato Regional Council will maintain an audit log of the changes to an FEP which will help with FEP audits and compliance auditing.
- 1.8. Given the complexity of the different roles and responsibilities discussed in this and previous evidence from the Waikato Branch of NZIPIM a table summarising this is provided as Appendix 1.

2. Scope of evidence

- 2.1. In this evidence I will provide information on behalf of the Waikato Branch of NZIPIM on the definition of a CFEP and the use of CFEP throughout the Proposed Plan Change.
- 2.2. It also includes evidence relating to auditing requirements in the Proposed Plan Change and who can alter FEPs.

- 2.3. This evidence is limited to the material covered in the original submission by the Waikato Branch of NZIPIIM.
- 2.4. The Waikato Branch of NZIPIIM presented expert evidence as part of Block 1 and 2 hearings and that evidence statements are still pertinent.
- 2.5. The Branch seeks to be involved in any future conferencing on areas pertaining to its submission. The Branch is also willing to continue to engage proactively with the Waikato Regional Council where we can provide expert assistance on behalf of our members.

3. Introduction

- 3.1. My full name is **LEE ANTONY MATHESON**.
- 3.2. I am a registered member of NZIPIIM and have been since 2011. I have been a North Island elected board member for NZIPIIM since 2017. I am a member of the Bay of Plenty Branch, but a number of our advisory team are members of the Waikato Branch.
- 3.3. I am a Director and Shareholder of Perrin Ag Consultants Limited, an advisory and consultancy business providing a range of services to the pastoral agricultural sector, including the calculation of historic contaminant losses and the preparation of farm environment plans in a number of jurisdictions, and have been an employee of the company since August 2006, becoming a director in April 2008 and have been the managing director since 2015.
- 3.4. I have the following qualifications: Bachelor of Applied Science (Rural Valuation and Management) with First Class Honours (Plant Science) and an Advanced Certificate in Sustainable Nutrient Management in New Zealand Agriculture from Massey University. I am a Registered Member of the New Zealand Institute of Primary Industry Management. I also hold a Diploma in Financial Services from the Australian Financial Markets Association and have completed the OneFarm Governance Advisory Training Programme.

Background

- 3.5. I am familiar with the proposed Plan Change with respect to the FEPs, the NRPs, the people certified to undertake FEPs and NRPs, including the required qualifications, the timeframes and auditing processes.
- 3.6. I have not been involved in the development of the Plan Change. However, our firm, Perrin Ag Consultants Ltd, has made an independent submission on this Plan Change and we have been engaged on separate occasions by both Beef+Lamb NZ and the Fonterra Cooperative Group Limited to undertake modelling, analysis or reviews on third-party work that may have been used to inform the CSG process or ultimately submissions on this Plan Change by those organisations. We have also been previously engaged by the Waikato Regional Council to provide advice on elements of the proposed implementation of Plan Change 1, none of which is related to this evidence.

- 3.7. In March 2018 Graham Parker and Carla Muller, on behalf of the Waikato Branch of NZIPIIM, met with Waikato Regional Council representatives to discuss the Waikato Branch's submission.
- 3.8. I presented expert evidence as part of the Block 1 and 2 hearings for this Proposed Plan Change for on behalf of the Waikato Branch of NZIPIIM.
- 3.9. The National office for NZIPIIM has been undertaking a programme with regional councils around the country, as well as central government, which is looking at creating a national certification scheme for farm environment planners. This would allow regional councils the opportunity to use nationally certified farm environment planners if they chose.

Code of Conduct

- 3.10. I have read the Environment Court's Code of Conduct for Expert Witnesses contained in the Environment Court's Practice Note 2014, and I agree to comply with it. In that regard, I confirm that this evidence is within my area of expertise except where I state that I am relying on the evidence of another person. I have not omitted to consider material facts known to me that might alter or detract from the opinions expressed in this evidence.

4. Background

- 4.1. The Waikato Branch of NZIPIIM is attending the third Block of hearings for the Plan Change to provide expert evidence in relation to the aspects relating to our original submission which are covered in the Section 42A Officers Report for Block 3. In particular the following aspects are covered:
 - 4.1.1. The definition of a CFEP,
 - 4.1.2. Auditing requirements in the Proposed Plan Change, including the review process, point of compliance and moderation of CFEPs, and
 - 4.1.3. Who can alter FEPs.
- 4.2. The Waikato Branch of NZIPIIM previously attended Block 1 hearings to provide expert evidence on the number of suitably qualified farm environment planners who have capacity and desire to undertake FEPs which are of a high quality within the desired timeframes.
- 4.3. The Waikato Branch of NZIPIIM previously attended Block 2 hearings to provide expert evidence on the definition of CFNAs, auditing (in particular who can moderate FEPs and NRPs undertaken by certified professionals) and who can amend FEPs.
- 4.4. Some of the information presented in this expert evidence statement covers the same topics in previous expert statements provided by me for the Waikato Branch of NZIPIIM. Where topics are revisited it is because new information has been provided in the Section 42A report.

5. Definition of a Certified Farm Environment Planner (CFEP)

Original Submission

- 5.1. The Waikato Branch of NZIPIIM supported the definition of a CFEP in the proposed Plan Change (and subsequent Variation 1) with amendments. This is shown below with suggested additions underlined and suggested removals shown with struck-out text.
- 5.2. **Certified Farm Environment Planner:** is a person or entity certified by the Chief Executive Officer of Waikato Regional Council and listed on the Waikato Regional Council website as a Certified Farm Environment Planner and has as a minimum the following qualifications and experience:
- five years relevant experience in agricultural and horticultural ~~the management of pastoral, horticulture or arable~~ farm systems; and
 - completed advanced training or a tertiary qualification in sustainable nutrient management ~~(nitrogen and phosphorus)~~; and
 - has either completed training that demonstrates that they are competent to complete the sediment and microbial risk assessments and mitigation identification in Farm Environment Plans, or has experience in soil conservation and sediment management.

Section 42A Officer's Report Block 3

- 5.3. The Section 42A for Block 3 suggests the following definition of a CFEP based upon the submissions received. Suggested additions are underlined and suggested removals are shown with struck-out text
- 5.4. **Certified Farm Environment Planner:** is a person ~~or entity~~ certified by the Chief Executive Officer of the Waikato Regional Council ~~and listed on the Waikato Regional Council website as a Certified Farm Environment Planner~~ and has a minimum the following qualifications and experience:
- ~~Five~~ Three years' relevant experience in agricultural and horticultural ~~the management of pastoral, horticultural or arable~~ farm systems; and
 - A Certificate of Completion in Advanced Sustainable Nutrient Management in New Zealand Agriculture from Massey University or ~~completed an equivalent~~ advanced training or a tertiary qualification in sustainable nutrient management ~~(nitrogen and phosphorus)~~; and
 - Experience in soil conservation and sediment management;-

And agrees to follow the procedures and guidelines set out by Waikato Regional Council and audits of the Certified Farm Environment Planner's work by Waikato Regional Council show that the Planner is preparing and/or approving Farm Environment Plans in accordance with the procedures and guidelines.

Note: Certified Farm Environment planners will be listed on the Waikato Regional Council's website.

Conclusion

- 5.5. On the basis of the discussion included below, the submissions on the Plan Change, the Section 42A Report, further consultation with members and the ongoing development of a national FEP certification programme, it is recommended that the national certification be the preferred pathway and replaces the minimum requirements included in the CFEP definition. However, if there is a desire to include an alternative pathway then it is recommended that the definition of a CFEP is adjusted as follows. Suggested additions are underlined and suggested removals are shown with struck-out text.
- 5.6. **Certified Farm Environment Planner:** is a person ~~or entity~~ certified by the Chief Executive Officer of the Waikato Regional Council ~~and listed on the Waikato Regional Council website as a Certified Farm Environment Planner~~ (or a delegate of the Chief Executive Officer as approved by the Chief Executive Officer of the Waikato Regional Council) and has a minimum the following qualifications and experience:
- a. Three years' relevant experience in agricultural and horticultural ~~the management of pastoral, horticultural or arable~~ farm systems; and
 - b. A Certificate of Completion in Advanced Sustainable Nutrient Management in New Zealand Agriculture from Massey University or completed an equivalent advanced training or a tertiary qualification in sustainable nutrient management ~~(nitrogen and phosphorus)~~; and
 - c. Three years' experience in soil conservation and sediment management; or
 - d. A certificate in Farm Environment Planning under a national FEP certification scheme which is approved by the Waikato Regional Council Chief Executive Officer.

And agrees to follow the procedures and guidelines set out by Waikato Regional Council and audits of the Certified Farm Environment Planner's work by Waikato Regional Council show that the Planner is preparing and/or approving Farm Environment Plans in accordance with the procedures and guidelines.

Note: Certified Farm Environment planners will be listed on the Waikato Regional Council's website.

The reasons for this are explained below.

Discussion

National certification scheme

- 5.7. The Report "Proposed Revisions to Schedule 1 to incorporate Good Farming Practice into Farm Environment Plans" discusses, as part of the section 'CFEP quality control', national certification schemes. It states that:

"The Council has been actively working at a national level to assist with the introduction of a national Farm Environment Planner certification programme, that will oversee

competency standards, continuing professional development and disciplinary matters for professional CFEPs. In addition to requiring CFEPs to sign up to the Councils Terms of Agreement, the Council also proposes to require CFEPs to be professionally certified as a Farm Environment Planner once the national certification system is established.”

5.8. This is in line with the Section 42A report for Block 3 which states that “*Officers are also aware that there are discussions at a national level regarding FEPs and CFEP requirements. If these processes develop useful or regulated national criteria, then these are recommended to be adopted (if necessary, within the scope of any submissions lodged). Officers will advise, in the Reply Report, if this is the case and any revised wording.”*

5.9. If this develops as expected by the NZIPIM into a pathway for people to become CFEPs then how this pathway fits in relative to the rest of the criteria should be clarified. For example, is it an equivalent course in point B, or does it replace points A, B and C. It is suggested that a national certification scheme, such as the one designed by NZIPIM would replace all points (a, b and c) under the CFEP definition.

5.10. The proposed national certification scheme process is:

To become a Certified Planner under the FEP Certification Scheme, applicants need to have successfully completed the Advanced Sustainable Nutrient Management course from Massey University, and have at least three years’ experience within the primary industry before applying for certification.

Upon satisfying these requirements, applicants are required to complete the following assessments process:

- *Successfully complete on-line assessment modules to test the applicant’s competency and knowledge base against the competency framework for the scheme*
- *Submit Farm Environmental Plan client reports for independent assessment to demonstrate the applicant’s skills and knowledge meet the requirements of the scheme.*
- *Demonstrate knowledge of local regional rules where required by specific regional councils.*
- *Ongoing professional development*

Once individuals have successfully completed the certification process, there is an ongoing requirement for Certified Planners to undertake Continuing Professional Development (CPD) of 20 hours/year.

5.11. I recommend that any national certification scheme ideally replace the proposed pathway for certification under the Proposed Plan Change. This would create simplicity as there would only be one pathway. The pathway would be robust, transparent and independently run. Given that the national certification is tailored to creating farm environmental plans it provides a level of rigour not currently captured in the definition.

- 5.12. However, if this is not the preferred approach then it would be preferable that the national certification process would replace all three points (points a, b and c) under the CFEP definition. The national certification process encompasses a required level of knowledge of the industry and the Advanced Nutrient Management Course as a prerequisite, participants then must complete tailored assessment modules, demonstrate local knowledge as required by the relevant regional council and submit FEPs for assessment. They are then required to undertake continuing professional development. Based on this, it would not be applicable for someone to meet the proposed minimum requirements as specified in the Section 42A report for Block 3 and undertake the national certification programme.
- 5.13. It is critical that the minimum standards of one pathway don't undermine the other. Given the content, rigor and independent evaluation associated with the proposed national certification scheme, those seeking certification via the experiential pathway would need to be able to demonstrate that they meet a standard at least as high as the tailored national certification in FEP.

Adjustments to the existing minimum requirements in the CFEP definition

- 5.14. A suggested change to the definition of a CFEP, not included in our original submission was to enable someone to be certified by a delegate who is approved by the Chief Executive Officer of the Waikato Regional Council. The reason behind this is that if a national certification scheme was to be deemed acceptable then the Chief Executive Officer could delegate the responsibility of certifying CFEPs to the body administering the national certification. This addition provides some future flexibility for the Waikato Regional Council and could avoid duplication of work depending on how a national certification scheme is run.
- 5.15. The change from "*the management of pastoral, horticultural or arable farm systems*" to "*relevant experience in agricultural and horticultural...*" is aligned with the Waikato Branch of NZIPIMs original submission. As discussed in the original submission, this change ensures that professionals such as farm consultants who have experience in farm systems but may not have been managing farms are able to be considered for CFEPs. The change to agricultural and horticultural farm systems reflects the wider range of potential farm system types in the catchment, such as poultry farms.
- 5.16. Clarification of the Certificate of Completion in Advanced Sustainable Nutrient Management in New Zealand Agriculture from Massey University in point B of the definition will support clarity for those professionals seeking to become CFEPs.
- 5.17. It is important to include the ability for completion of an equivalent course to provide for situations where the market place providing suitable training changes. This is crucial if a particular course, such as the Advanced Sustainable Nutrient Management course, is named explicitly in the Proposed Plan Change.
- 5.18. The recommendation in the Section 42A report for Block 3 to amend the requirement for five years' experience to three years' experience appears to be based on concerns around capacity of CFEPs. There is a risk related to capacity of CFEPs (and CFNAs) as detailed in the Waikato Branch of NZIPIMs original submission as well as evidence in

the Block 1 and Block 2 hearings, as well as by other submitters. However, this needs to be balanced with the quality of FEPs especially given their importance in achieving the desired objectives in the Proposed Plan Change.

- 5.19. The original submission was provided in February 2016, over two years ago. Since then more rural professionals have undertaken the Advanced Sustainable Nutrient Management Course and continued to gain experience. However, there is no comprehensive stock take of how many professionals would be willing and able to be CFEPs as of the date of Block 3 hearings that NZIPIM is aware of. The required capacity will also depend in part on how land users undertake FEPs, by themselves with them being signed off by CFEPs, as part of groups and signed off by CFEPs or completed by CFEPs entirely. In lieu of this supply and demand information it is complicated to select the best amount of experience required.
- 5.20. Currently the proposed definition of a CFEP includes three minimum standards relating to farm systems knowledge, nutrient management knowledge and soil conservation knowledge. This set of minimum standards will help safeguard the quality of CFEPs, but it is not an infallible criterion to ensure CFEPs will be of a certain standard.
- 5.21. Having a minimum standard of five years' experience provides no guarantee that someone is more competent than a person with three years. This will depend on the nature of work and quantum of relevant work undertaken, as well as other factors such as professional development undertaken. As discussed in the Section 42 report for Block 3 having five years as a minimum requirement could provide a barrier for capacity with no direct correlation to an increase in quality.
- 5.22. However, given the importance of FEPs to the Proposed Plan Change, and that a specific national certification programme for those rural professionals completing FEPs is still in development, retaining a minimum experience level would provide a logical criterion.
- 5.23. In relation to capacity and minimum years' experience, it must not be forgotten that the Proposed Plan Change currently allows for anyone to undertake a FEP. The key requirement is that it is signed off by a CFEP. This also distorts the supply and demand relationship and makes it challenging to set requirements in relation to capacity.
- 5.24. Given the reasons above, it is recommended that the required duration of experience for CFEPs is lowered to three years.
- 5.25. It is recommended that a less subjective and more quantifiable descriptor is used in point c which is "*experience in soil conservation and sediment management*" in the Section 42A Report for Block 3. This definition is ambiguous, subjective and provides no basis on how it will be assessed. This creates a risk that the process will not be transparent or robust.
- 5.26. In lieu of demonstratable tailored, independent and verifiable training it is important to be able to demonstrate a certain level of amassed experience to provide a degree of confidence to landowners using a CFEP, Waikato Regional Council and communities that the outcomes will be appropriate.

- 5.27. While it is challenging to set a less subjective and more quantifiable definition, I believe one is needed. Three years' experience is recommended; however, this could be altered to something else such as a different number of years, a number of relevant practicing hours, a demonstration of knowledge (such as submitting reports or passing a test process) or undertaking specified training.
- 5.28. It is recommended that this definition is altered and three years provides a possible option which is comparable to the required level of farm systems experience.
- 5.29. It is important to remember that the requirements set out in the definition of a CFEP (namely point A, B and C) in the Section 42A report for Block 3 do not guarantee a CFEP will be competent. As such the moderation of CFEPs, their professional obligations and ethics (either signed up to in a terms of agreement or through holding a certificate from a national certifying body) and the ability for Waikato Regional Council to revoke someone's certification are important features in the Proposed Plan Change.

6. Auditing

- 6.1. In Block 2 the Waikato Branch of NZIPIIM presented evidence relating to auditing. In summary it was noted that:
- 6.2. *"There are three types of auditing that is required, one relating to auditing compliance, one auditing certified industry schemes and one auditing the certified professionals who are creating NRPs and FEPs [to ensure professionals are taking approximately the same approach when facing the same problem] (referred to from here on in as moderation).*

Moderation of the NRP and FEPs undertaken by the certified professionals must be carried out by someone with no conflict of interest to the certified professional who undertook the original work."

- 6.3. The Section 42A report for Block 3 notes that:

6.3.1. *"Several submitters, including the NZIPIIM and tangata whenua have recognised the need for an auditing system to ensure consistency across FEPs."* This is the professional moderation we attempted to describe in our Block Two evidence.

6.3.2. *"Waikato Environment Centre seeks to amend the implementation method so that compliance monitoring is carried out by an independent party. The submitter perceives that there is a conflict of interest through the proposed appointment of farm industry professionals (such as fertiliser company representatives) being able to certify and undertake auditing of FEPs"*.

6.3.3. *A number of submitters raise queries in submissions regarding the auditing process for FEPs, including:*

- *A need for definition of the process for auditing FEPs, including that auditors be suitably qualified, certified and independent.*
- *Requests for a standardised program to monitor the effectiveness of FEPs on a frequent basis, with the frequency of auditing to decrease once compliance or an agreed standard is achieved, or the auditing and monitoring shows that mitigation measures are implemented and effective.*
- *Clarification of who will be responsible for monitoring, how monitoring of FEPs will be undertaken and who will pay for monitoring, and a requirement to keep a records of inspections.*
- *Clarification over who will enforce FEPs and the penalties and consequences of not preparing or implementing a FEP.*

6.4. Further information was provided auditing in the Section 42A Block 3 report, in particular the Report “Proposed Revisions to Schedule 1 to incorporate Good Farming Practice into Farm Environment Plans”. The points from submissions above highlight the importance of two of the three auditing requirements included in the expert evidence for the Waikato Branch of NZIPIM for Block 2; namely auditing compliance and moderation of certified professionals.

6.5. The Waikato Branch of NZIPIM have differentiated between auditing and moderation, though it is noted that the Waikato Regional Council does not. The Waikato Regional Council discusses three ‘auditing’ processes in the Section 42A Report for Block 3, namely:

6.5.1. **Compliance auditing:** Undertaken by the Waikato Regional Council to ensure farmers are meeting the requirements of their FEP.

6.5.2. **Moderation of CFEPs:** Undertaken by the Waikato Regional Council, or professionals on behalf of the Waikato Regional Council, to ensure consistency and quality of FEPs and NRPs undertaken by certified professionals.

6.5.3. **Reviews of FEPs:** Undertaken by CFEPs who have training in auditing and can review FEPs and the Level of Confidence (LOC) grade and review grade as part of ‘FEP compliance auditing’.

6.6. The moderation of CFNAs is not discussed again here as it was covered in Block 2. Neither is the moderation of CFEPs within CIS as it is assumed that this will follow the same process for CFEPs outside of CIS. Auditing of CIS was also discussed in Block 2 and is not covered again here.

Compliance auditing

6.7. The Report “Proposed Revisions to Schedule 1 to incorporate Good Farming Practice into Farm Environment Plans” recommends that compliance auditing is undertaken by the Waikato Regional Council, not CFEPs. The report specifically notes that:

6.7.1. “The CFEPs are not warranted enforcement officers and have no powers as enforcement officers under the RMA.”

- 6.7.2. “The CFEP would be present at the invitation of the farmer, to provide an independent assessment of the farmer’s practices in comparison to the objectives and principles in the schedule.”
- 6.7.3. “The CFEPs would be under no obligation to report suspected non-compliance to the council.”
- 6.7.4. “Potentially, a CFEP could be called as witness to Council enforcement action taken following a Council investigation which may have been triggered by a FEP review report from a CFEP.”
- 6.8. Compliance officers are therefore different from CFEPs, including the CFEPs who undertake audits of FEPs, and there is a clear distinction between compliance auditing and auditing of FEPs (as part of the review process). These are important functions to have clearly defined and separate.
- 6.9. It is up to the Waikato Regional Council and their compliance officers to undertake compliance auditing, including which farms to undertake this on. However, the targeting of farms for compliance auditing can, and likely will be, informed by the CFEP reviews and in particular the Level of Confidence (LOC) grade and review grade as part of the audits undertaken by CFEPs who are endorsed in auditing.
- 6.10. It is important that compliance auditing is undertaken by the Waikato Regional Council as CFEPs are not enforcement officers. It would be inappropriate to have the same people or person advising on behaviour change (as in FEPs) and then auditing for compliance.
- 6.11. In relation to the potential for CFEPs to be called as witnesses to Council, it must be noted that CFEPs must have a professional obligation to act within the bounds of their professional expertise and provide independent, impartial and uninfluenced evidence or declare a conflict of interest.

Moderation of CFEPs

- 6.12. The Block 2 the Waikato Branch of NZIPIM presented evidence relating to the moderation of the NRP and FEPs undertaken by the certified professionals. Namely that they must be carried out by someone with no conflict of interest to the certified professional who undertook the original work. This moderation is not compliance auditing, instead it should be to ensure the quality and consistency of the FEPs.
- 6.13. The Report “Proposed Revisions to Schedule 1 to incorporate Good Farming Practice into Farm Environment Plans” provides further information on the suggested approach for the moderation of CFEPs. Namely that “The Council will operate an audit programme, where it will audit CFEPs performance on a regular basis for quality control purposes.”
- 6.14. It is crucial that this moderation occurs, and the audit programme designed is robust and transparent. Ideally this will be undertaken by Waikato Regional Council staff or independent professionals, who have at least the same level of competency as CFEPs.

FEP Reviews

- 6.15. The Report “Proposed Revisions to Schedule 1 to incorporate Good Farming Practice into Farm Environment Plans” also sets out a review process associated with FEPs. In this process the qualified person will review FEPs and assign a Level of Confidence (LOC) grade and review grade (also known as audit grade).
- 6.16. The Report recommends that these reviews are undertaken by a CFEP “who has training in auditing”. The required skills or criteria to be a CFEP with training in auditing needs to be clearly defined in the Proposed Plan Change.
- 6.17. It does not explicitly state that the FEP reviews carried out by CFEPs will be subject to the same type of, or incorporated into, the programme auditing CFEPs performance. It is recommended that the CFEPs undertaking auditing must be included in the Waikato Regional Council’s auditing of CFEP programme. This will ensure quality and consistency of the FEP reviews.

7. Altering FEPs

- 7.1. In Block 2 the Waikato Branch of NZIPIM presented evidence relating to the alteration of FEPs. In summary it was noted that:
- 7.2. *“It is important to provide clarity over who can amend FEPs. If FEPs are amended by a non-certified person, they may no longer meet the technical requirements which could lead to complications related to the professional obligations of the Certified Farm Environment Planner (CFEP) who prepared the FEP.”*
- 7.3. Further information was provided on the alteration of FEPs in the Section 42A Block 3 report. Namely that *“Schedule 1 as notified did not include a process for how an FEP might be amended or reviewed.... Submissions relating to this include concern regarding the lack of a procedure for the review and or amending of FEPs and the need for a robust revision mechanism; and the need for FEP flexibility, so that properties and enterprises can respond to local events.”*
- 7.4. The Section 42A Block 3 report sets out a suggested revised Schedule 1. Part D of the revised Schedule 1 states:
- Unless otherwise required by the Waikato Regional Council in accordance with any conditions of the resource consent, changes can be made to the FEP without triggering the need for review by a CFEP, provided:*
- 1. The farming activity remains consistent with Part B of this schedule*
 - 2. The change to the FEP does not contravene any mandatory requirement of the resource consent, or any requirement of the Regional Plan that is not already authorised.*
 - 3. The nature of the change is documented in writing and made available to any CFEP undertaking a review, or to the Waikato Regional Council, on request.*
- 7.5. The Waikato Branch of NZIPIM acknowledges the fine balance between FEPs which allow enough flexibility to incentivise change and the need for certainty and compliance. In addition, the Waikato Branch of NZIPIM believes there also needs to be a balance between allowing landowners to adjust their FEPs as required in a way that recognises

the changeable nature of farming and ensuring that CFEPs are protected from subsequent third-party amendments to FEPs so that they no longer meet the requirements in the Proposed Plan Change when the CFEP is being audited for the FEP.

- 7.6. The Waikato Branch of NZIPIM is supportive of the general intention behind the suggested process (Part D in Schedule 1) to enable changes to FEP. However, it is believed that a process which enables farmers to have some flexibility, that ensures CFEPs can meet their liability insurance requirements while also providing some certainty for the community and Waikato Regional Council is more appropriate. This is outlined below.
 - 7.6.1. The FEP is signed off by a CFEP, the CFEP is responsible for the quality of the FEP at this point. The farmer is still responsible for compliance and implementing the FEP.
 - 7.6.2. The farmer (or other person on their behalf) can make changes to the FEP. These changes must be notified to the Waikato Regional Council in writing. At the point when any changes are made to the FEP, the CFEP who signed off the FEP is no longer responsible for the quality of the FEP.
 - 7.6.3. The Waikato Regional Council is responsible for informing the farmer if the changes made to the FEP mean the revised FEP needs to be signed off by a CFEP. The Waikato Regional Council will need to decide and provide information on what types of changes are likely to necessitate the FEP being resigned off by a CFEP.
 - 7.6.4. The Waikato Regional Council will maintain an audit log of the changes to an FEP which will help with FEP audits and compliance auditing.
- 7.7. This recommended process requires the Waikato Regional Council to maintain a log of changes to FEPs and to decide and provide information on what types of changes are likely to necessitate the FEP being resigned off by a CFEP. It requires farmers to inform the Waikato Regional Council of changes to an FEP.
- 7.8. It protects the liability of the CFEP as their responsibility ceases when any changes are made to the FEP.
- 7.9. This recommended process is similar to my understanding of what is currently occurring in other regions in similar processes with CFEPs or their equivalent, including their ability to satisfy professional indemnity insurance requirements.
- 7.10. This recommended process would replace the Part D of Schedule 1 which is included in the Section 42A report for Block 3. It provides a balance where farmers can have some flexibility of the FEP, provide a level of confidence to auditors and ensure CFEPs are able to fulfil their professional requirements.

- 7.11. For any change that is signed off by a different CFEP to the one who originally did the FEP, then the CFEP making the change must take over responsibility and liability for the standard and requirements of the FEP as a whole.
- 7.12. It should also be noted that, liability for any amendments to submitted FEPs that are not in adherence with the recommended process would sit with the land-owner.

8. Dispute resolution

- 8.1. The Section 42A Block 3 report comments on dispute resolution, noting that a number of submitters discussed it. The Section 42A Block 3 report notes that *“In terms of dispute resolution officers noted that there is already a process under the RMA (Section 357A, 357C, 357D and 358) for applicants to object to consent conditions. It is not considered appropriate to specify within PC1 any additional or alternate dispute resolution matters, albeit the Council could do so as part of implementation.”*
- 8.2. It is worth bringing to the attention of the Hearing Commissioners that alternative avenues could include disputes processes within professional bodies such as NZIPIM if the CFEPs (and CFNAs) are members.

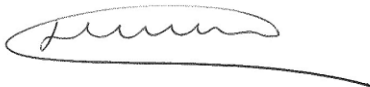
9. Conclusions

- 9.1. It is recommended that, if implemented, the national FEP certification scheme [which is currently in the final phase of development] replaces the minimum requirements included in the CFEP definition. However, if there is a desire to include an alternative pathway then it is recommended that the definition of a CFEP is as follows.
- 9.2. **Certified Farm Environment Planner:** is a person certified by the Chief Executive Officer of the Waikato Regional Council (or a delegate of the Chief Executive Officer as approved by the Chief Executive Officer of the Waikato Regional Council) and has a minimum the following qualifications and experience:
- a. Three years' relevant experience in agricultural and horticultural farm systems; and
 - b. A Certificate of Completion in Advanced Sustainable Nutrient Management in New Zealand Agriculture from Massey University or an equivalent advanced training or a tertiary qualification in sustainable nutrient management; and
 - c. Three years' experience in soil conservation and sediment management; or
 - d. A certificate in Farm Environment Planning under a national FEP certification scheme which is approved by the Waikato Regional Council Chief Executive Officer.

And agrees to follow the procedures and guidelines set out by Waikato Regional Council and audits of the Certified Farm Environment Planner's work by Waikato Regional Council show that the Planner is preparing and/or approving Farm Environment Plans in accordance with the procedures and guidelines.

Note: Certified Farm Environment planners will be listed on the Waikato Regional Council's website.

- 9.3. Compliance auditing should be completed by Waikato Regional Council staff, not CFEPs, as CFEPs are not warranted enforcement officers under the RMA.
- 9.4. I agree with the Section 42A Report for Block 3 recommendations that the Waikato Regional Council operate an audit programme, where it will audit CFEPs performance on a regular basis for quality control purposes. This is crucial to the success of the use of FEPs and CFEPs within the Proposed Plan Change. While there is limited detail on this audit programme it must:
 - 9.4.1. Be carried out for CFEPs both within and outside of Certified Industry Schemes.
 - 9.4.2. The CFEPs undertaking audit reviews of FEPs should also be explicitly included in the Waikato Regional Council's auditing of CFEP programme. This will ensure quality and consistency of the FEP reviews. Currently they are not explicitly included.
 - 9.4.3. This audit programme is robust and transparent. Ideally this will be undertaken by Waikato Regional Council staff or independent professionals, who have at least the same level of competency as CFEPs.
- 9.5. Part D of Schedule 1 provides a process for auditing FEPs. This process is not suitable as it will be highly unlikely to meet the requirements for professional indemnity insurance for a CFEP. An outline of an alternative process is provided which attempts to balance the needs of CFEPs, farmer, Waikato Regional Council and communities. The Waikato Branch of NZIPIM is willing to work with the Waikato Regional Council to further discuss and develop this process
- 9.6. The Waikato Branch of NZIPIM remains open to providing support to the Waikato Regional Council within our expertise and mandate of members if required based on the information in our original submission, statements of primary evidence in Block 1 and Block 2, and this statement of primary evidence.



Lee Matheson

5 July 2019

Appendix 1: Summary table of roles and responsibilities

Action	Who can undertake it					Notes
	Other [^]	CFNA	CFEP	CFEP+R*	WRC	
Complete an NRP	✓	✓	✓	✓		Anyone can complete a NRP.
Complete an FEP	✓		✓	✓		Anyone can complete a FEP.
Sign off an NRP		✓	✓	✓		Only a CFNA, CFEP or CFEP+R can sign off a NRP, including in a CIS.
Sign off a FEP			✓	✓		Only a CFEP or CFEP+R can sign off a FEP, including in a CIS.
Moderate an NRP		✓	✓	✓	✓	Undertaken by the WRC, or professionals who are at least CFNAs, on behalf of the WRC, to ensure consistency and quality of NRPs undertaken by CFNAs.
Moderate a FEP			✓	✓	✓	Undertaken by the WRC, or professionals who are at least CFEPs, on behalf of the WRC, to ensure consistency and quality of FEPs undertaken by CFEPs.
Review an FEP				✓	✓	Undertaken by CFEPs who have training in auditing and can review FEPs and the Level of Confidence (LOC) grade'.
Audit a CIS					✓	To ensure the CIS is meeting the requirements it was established under. This is a compliance function and should be undertaken by WRC.
Alter a FEP	✓		✓	✓		The owner of the FEP, the CFEP who signed off the FEP or another professional can alter an FEP. But the CFEP who signed the FEP off are not responsible for the quality of the FEP after it is altered.
Compliance auditing					✓	This ensures landowners are meeting consent conditions, including FEPs and NRPs, and can only be undertaken by WRC staff as enforcement officers.
[^] Other includes consultants and rural professionals who are not certified and landowners and farmers. * CFEP+R is a CFEP who has an endorsement in reviewing FEPs.						