

**BEFORE INDEPENDENT HEARING COMMISSIONERS
AT HAMILTON**

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of the hearing of submissions on Proposed Plan
Change 1 to the Waikato Regional Plan

**STATEMENT OF PRIMARY EVIDENCE OF RICHARD ALLEN
FOR FONTERRA CO-OPERATIVE GROUP LTD (SUBMITTER 74057)**

BLOCK 2 HEARINGS

CORPORATE

3 MAY 2019

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CHAMBERS

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Instructed**
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1. EXECUTIVE SUMMARY

- 1.1 Fonterra notes that there appears to be a widespread awareness amongst submitters that nitrogen is not generally the key water quality issue across the catchment. Despite this, the focus of much evidence and the recommendations from the section 42A Report appears to be on requiring bigger decreases from the dairy “polluters” who contribute more of the N lost to the environment and requiring more aggressive management of N loss. Fonterra fully accepts the need to ensure N lost to the environment decreases, and that much of this burden will sit with the dairy sector. However the failure to focus to anywhere near the same degree on high sediment, phosphorus and *E.coli* loss activities (which, in contrast, are not generally referred to as “polluters”) is hard to understand in the context of the water quality science that has identified what needs to change to achieve the long term objective for the Waikato and Waipa Rivers as expressed in PC1 and in the Vision and Strategy. In my opinion there is a risk that some of the recommendations are responding to (and reinforcing) emotive commentary and are focussed on managing dairy farming effects in an unbalanced way.
- 1.2 Fonterra is entirely committed to improving industry performance with regard to effects on water quality. Our submissions and evidence do not look for ways to reduce our obligations and we will continue with our extensive on farm support and improvement programmes whatever the outcome of the PC1 process. It is, however, frustrating to us to see recommendations being made to the Panel that are not practical, nor efficient. Most importantly it is difficult to see how, if adopted, many of those recommended provisions could be effective.
- 1.3 Fonterra has introduced the idea of a Nitrogen Risk Scorecard in to the Plan framework primarily as a way to reduce the implementation challenges that the Waikato Regional Council will face with an Overseer based system. The section 42A Report rejects the Scorecard without any apparent understanding of why it might help Council with

implementation. It is described as “overly complicated” with the reporting officer suggesting that a stocking rate proxy can achieve the same outcome. It appears that the officer may not fully appreciate the complexity and multifactorial nature of the nitrogen issue. The “simple” alternative solution recommended (as a method to ensure N loss does not increase above a reference point) is not credible in my opinion.

1.4 I have considered the low intensity and medium intensity rules that appear in the section 42A report’s Tracked Changes Recommendations. In my opinion these rules create loopholes that will mean many large farms, some with intensive and high risk practices and often farming steeper and less stable land, will get very little regulatory oversight (almost none in the case of “low intensity”). These very properties may well be the highest sediment “polluters”. They are not inherently low risk, in the context of the PC1 objectives, just because on an average per owned hectares basis, they are deemed less intensive.

1.5 Fonterra believes having Certified Industry Schemes that are tightly controlled, and that explicitly do not replace the Council’s monitoring and enforcement obligations, can result in the streamlined rollout of FEPs with far more support for farmers than a Council-managed consenting regime can achieve. The recommendations on in the section 42A report will (as recognised by the officer) risk slowing down the implementation of PC1 and would result in a less efficient and effective approach than the proposed plan.

2. INTRODUCTION

2.1 My full name is Richard Grant Allen.

2.2 I have been employed by Fonterra Co-operative Group Limited (**Fonterra**) since 2008, most recently as Environmental Policy Manager. In my time with Fonterra I have been involved in the development and implementation of the on-farm environment programmes – namely the Effluent Programme, the Stock Exclusion (**Waterways**) Programme and the Nitrogen Programme. In my current

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role I am responsible for ensuring Fonterra policy positions are effectively represented in the various planning processes across New Zealand that may impact on dairy farmers and the dairy industry.

2.3 I hold a Bachelor of Agriculture Degree from Massey University and a Bachelor of Laws Degree from Waikato University. I also hold the Advanced Sustainable Nutrient Management Certificate from Massey University.

2.4 I have been a member of the Technical Advisory Group for the Overseer Best Practice Data Input Standards.

2.5 Prior to my employment with Fonterra I worked for the Waikato Regional Council (**Council**) in the Resource Use Group. My role with the Council primarily involved monitoring and enforcement of the farm rules in the Regional Plan.

2.6 I have previously owned and operated a large drystock property in the King Country running sheep, cattle and deer and I currently farm a 20ha deer property.

2.7 I was involved on behalf of Fonterra in preparing its submissions and further submissions on Proposed Plan Change 1 (**PC 1**). I also gave evidence at the Block 1 hearings. I am therefore familiar with the provisions of PC 1 to the Waikato Regional Plan and I am authorised by Fonterra to provide this statement on its behalf as a Fonterra representative.

Scope of Evidence

2.8 My statement covers:

- (a) Nitrogen Risk Scorecard.
- (b) Section 42A Report recommended rule changes.
- (c) Overseer and farm data security.
- (d) Certified Industry Scheme (**CIS**) and permitted activity rule.

- (e) FEP policy, exceptions to FEP requirement.
- (f) Appendix 1: CIS application documentation.
- (g) Appendix 2: Fonterra FEP example.
- (h) Appendix 3: Nitrogen Risk Scorecard documentation.

2.9 I have made comment on the section 42A Report as that report relates to issues that Fonterra identified in its submissions.

3. NITROGEN RISK SCORECARD

3.1 In the Block 1 hearings I presented evidence on the concept of a “scorecard” approach to help manage the risks associated with nitrogen loss and farm system intensity. The Nitrogen Risk Scorecard (**Scorecard** or **NRS**) was introduced to show that there are well developed management approaches, complementary to the use of Overseer in regulation, that can significantly reduce the implementation challenges facing the Council. While Fonterra recognises the difficulty in introducing a relatively new concept into regulation, it is our view that the recommendations from the section 42A Report, while explicitly recognising the implementation challenges ahead, then dismiss the opportunity to do something about those challenges without perhaps fully understanding the impact of taking that position.

3.2 At paragraph 106 of the section 42A Report, the reporting officer considers that, “...*the Fonterra proposal seems to create an over complicated solution...*”. As a simple alternative to the Scorecard the officer seems to suggest that, through consent processes and annual provision of a few key pieces of farm information, an assessment will be made on whether an Overseer file is necessary. As someone with considerable farm systems and Overseer experience I have no idea how anyone, following the officer’s suggested simplified solution, could determine with any degree of objectivity or accuracy if a nitrogen reference point (**NRP**) is being breached, particularly on a 5 year rolling output basis. It is my opinion that the Council has neither the capability nor capacity to annually consider the data provided for thousands of

farms, and to provide an informed assessment of likelihood of NRP breach for each of those properties – if that is the officer's simple solution then it is simply not credible.

- 3.3 If the NRP is to be a key part of the rule framework having such a subjective and uncertain approach (as described at 106 of section 42A) to identifying compliance, undermines the credibility of the whole NRP approach.
- 3.4 Fonterra hopes that the Hearing Panel considers the Scorecard more fully than the section 42A Report does. The point of the Scorecard approach is that it is simple to understand and cost effective to administer while providing a detailed and objective assessment of any change in N loss risk (or the risks associated with intensification). The section 42A Report's recommended alternative of an entirely subjective assessment based on a few pieces of farm information makes little sense against an Overseer based reference point number. If the officers believe that a few pieces of farm information provided to the regional council can form the basis of an informed assessment that "*...nitrogen leaching is not increasing*" (at para 106) we would question the need for the extremely expensive and contentious use of Overseer modelling in the PC 1 rule framework.

Nitrogen Risk Scorecard Description

- 3.5 Documentation on how the Scorecard works is appended to this evidence as Appendix 3. The section below sets out the basic workings of the tool.
- 3.6 The key output from the Scorecard is an assessment of risk across 6 key farm practices that are recognised as the primary drivers of farm nitrogen loss risk. These key farm practices are: stocking rate, imported N in fertiliser, imported N in feed, irrigation, cropping and effluent management. There are 5 simple risk ratings that can be applied to each factor; Very low, Low, Medium, High and Very High.

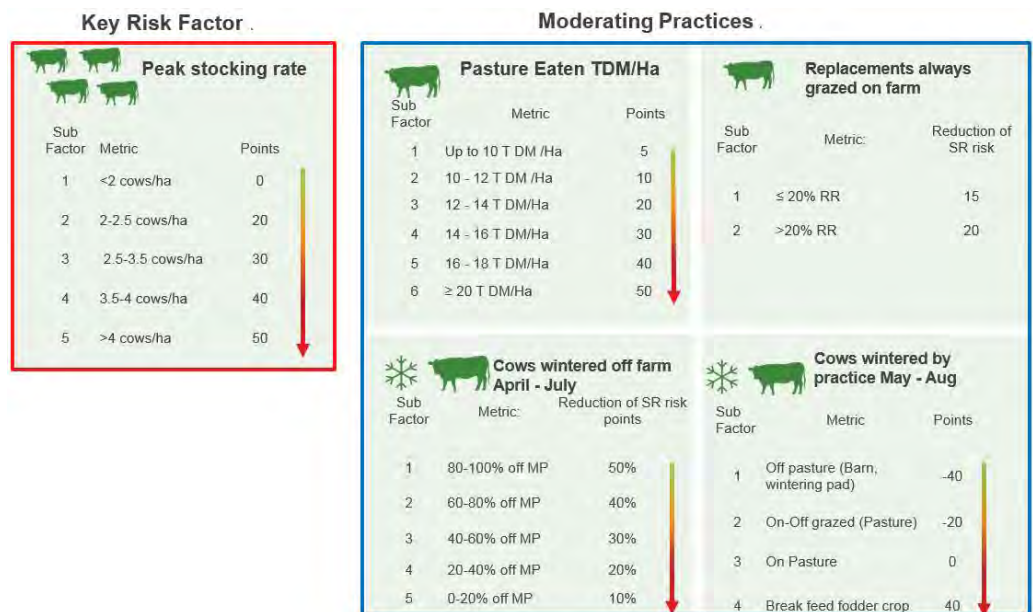
HOW THE SCORECARD WORKS



- Each management practice receives a risk rating.
 - The level of risk is determined by a score based on the farm data provided.
 - The risk score is calculated for each key farm practice. That score is then modified by consideration and scoring of 'sub factors' that might exacerbate or decrease the level of risk.
 - High risk practices receive higher points than lower risk practices and mitigating practices carry negative points.
- 3.7 The level of risk for each of the 6 farm management practices is determined by calculating an overall score per management practice, with a score of less than 20 being very low risk ranging to a score greater than 80 being very high risk.
- 3.8 The score is determined by a points system for each of the farm management practices. Points are attributed to a key driver of risk for each management practice (e.g. stocking rate is the key driver for the Stock Management risk factor as is total tonnes of N applied per effective hectare for the Nitrogen Fertiliser risk factor). Other specific sub practices that will exacerbate or mitigate the risk are then used to moderate the score for the underlying management practice. Practices

that would increase the risk of nitrogen loss attract additional points, while others that reduce N loss risk carry negative points.

- 3.9 The reported risk for each of the 6 farm management practices is therefore based on a final score determined by points assigned to the key driver of the particular risk area, modified by the consideration of, and points applied to, a number of sub practices (e.g. animals held on stand-off areas equates to a negative score as the stocking rate risk is reduced by the specific practice). Where data granularity allows, the sub practice points are on a variable scale (e.g. as the data shows a higher percentage of animal hours are spent on a structure where effluent is collected, the corresponding risk points are proportionally decreased).
- 3.10 As an example of how the Scorecard calculation works, below is the table describing the allocation of points for the Stock Management section. Each key farm practice calculation follows a similar approach.



- 3.11 The Scorecard also allows for an aggregated score to be calculated for each property. This aggregated score can be used for benchmarking and then for monitoring and reporting change from the benchmarked number. Each of the 6 key farm practices contribute varying amounts

of risk to each farm's whole farm nitrogen loss risk, therefore they are weighted to appropriately represent the risk. Scores for each individual risk factor will be calculated. The aggregated score will be derived from multiplying each risk factor by a weighted co-efficient.

4. SECTION 42A RECOMMENDED RULE CHANGES

Rule 3.11.5.2 Permitted Activity Rule – Low intensity farming.

- 3.12 While the section 42A Report recommends fundamentally reworking this rule (set out at page 40 of “Tracked Changes” Recommendations), in my opinion the rewrite fails to address a number of key issues previously identified and is likely to be inconsistent with national direction on FEPs. The loophole that Fonterra previously identified with “low intensity”, that allowed for a large property with forestry or bush areas to dilute the assessed stocking rate and avoid any FEP (and NRP if <6SU/ha), does not appear to have been considered or addressed. We are unsure if the reporting officer considered the issue irrelevant or just omitted to address it in the report. To leave a rule loophole that will mean many large properties will, in effect, fall outside the regulatory controls, is in our view inconsistent with the need to ensure all large scale farming moves to good practice.
- 3.13 Low intensity (assessed across a total farm area rather than an effective area) does not equate to low risk, particularly when the catchment issues might be primarily sediment and phosphorus. I would also note that the drystock sector has a strategic goal of all farms having and implementing a FEP by 2021. If the recommendations are adopted by the Hearing Panel the regulation will be undermining the industry goals.
- 3.14 Also in relation to the low intensity rule I note there is no clear explanation of how or when the stocking rate (that must be known to understand activity status) is to be calculated. While the reporting requirement is “average monthly stock units” it is not clear how this relates to the stocking rate thresholds that allow use of land for farming to be permitted.

- 3.15 In my opinion the reality of the low intensity rule, as rewritten, would be to allow a significant number of large farms, some with much more intensive practices diluted by surrounding unproductive land, to effectively avoid any regulatory oversight. National direction may well require this to be addressed in the near future but it would seem poor planning to allow for such a clear and significant loophole to remain.
- 3.16 The reporting requirements in the reworked rule also appear confused. As I have pointed out in my section on the Scorecard, the idea that a council officer can make a robust assessment of leaching (conformance with an NRP) based on monthly average stocking rate, tonnes of fertiliser, and tonnes of feed makes little sense. While an NRP is required under this rule if between 6 and 10 SU /ha it does not appear to require compliance with the NRP – only with the stocking rate limit. Having the coarse and subjective assessments described in the rule (at 3.11.5.2 - C.3.f.), immediately followed by a provision that requires “...full electronic access to Overseer” (C.3.g.) which presumably indicates an expectation that these farmers will hold current Overseer accounts, with relevant annual files available for council to review at will, lacks logic.
- 3.17 I believe the reality of the “low intensity” rule as recommended, will be that a significant number of large farms will get no oversight at all under PC1. If the recommendations package is accepted (remove CIS as permitted activity, require Overseer for nearly all farms, make all land use for farming other than “low intensity” require restricted discretionary consents (at least)) the Council will simply not have any resources to apply even the most cursory oversight of farms operating under 3.11.5.2. Such an obviously flawed rule should not be acceptable in the context of the proposed objectives.

Rule 3.11.5.2A Controlled Activity Rule – Medium intensity farming

- 3.18 Fonterra has some concerns about the recommended “option” of the medium intensity rule. It is our view that the rule framework as set out in the Fonterra Variation 1 submission is a far more robust approach that

provides for an increasing level of regulatory oversight as farming intensity increases.

- 3.19 As with the low intensity rule (discussed above) there appears to be an assumption (not justifiable in my opinion and not explained in the report) that there is a direct link between stocking rate being maintained (noting that the term is not defined) and nitrogen loss risk as described by a nitrogen reference point. In fact the medium intensity rule (3.11.5.2A) is even less credible in this regard as it does not consider fertiliser or feed inputs that are an additional reporting requirement under the low intensity rule. Further the rule (at 8.) appears to explicitly allow for the NRP to be breached as long as the stocking rate does not exceed 18SU – or the number of SU at the reference period. It is hard to understand how this can be consistent with the planning objectives to maintain or improve water quality.
- 3.20 It is of interest that the medium intensity controlled activity rule has, as a matter of control (at iv) *“Where the nitrogen reference point exceeds the 75th percentile nitrogen leaching value, actions, timeframes and other measures to ensure the diffuse discharge of nitrogen is reduced.....”* The inclusion of this matter of control must suggest that the reporting officers (or advising staff) are aware that the stocking rate proxy for leaching by itself is so weak that a farm in the 75th percentile for N loss could be identified as medium risk. Why the reporting officers have failed to recognise and allow for the same problem when monitoring N loss change against a reference point (using the same stocking rate proxy) is not clear.
- 3.21 The medium intensity rule also repeats the loophole available under the low intensity rule where the stocking rate is considered over the whole landholding, not the effective hectares. At an 18SU threshold there will be many farms with some areas of the farm under a much higher stocking rate where the only monitored intensity control is an undefined reporting on stock numbers. At least under this rule there is the requirement to have an FEP so while the controls on intensity are clearly flawed, at least the farm would remain under some level of Council oversight for good management practices.

- 3.22 Further highlighting that the section 42A author does not perhaps fully understand the purpose of a risk/scorecard approach, there is no consideration in the revised rules of any link between the use of Overseer or the Scorecard in supporting appropriate actions in the FEP for nitrogen management – including efficiency actions. If only the simplest nitrogen data is required to be reported to the Council how can any assessment of the implementation of the FEP actions for nitrogen be made? The Fonterra described approach looks to simplify regulation for lower risk farm systems while maintaining a robust, objective and repeatable monitoring regime. Additionally the approach allows for consistent FEP actions around nitrogen (and intensification risks) that farmers can readily understand and engage with.
- 3.23 In my opinion, the section 42A recommendations on low and medium risk rule changes if adopted, would remove any credible, transparent, objective monitoring / reporting regime. Instead it would result in rules with wide scope for gaming, inaction and superficial assessment of risk. The recommendations also seem to move even further down the track of indicating the focus of the plan change should be on decreasing nitrogen with even less attention on the risks associated with management practices on more marginal, often much less stable land. It is not clear what the basis might be for the apparent premise that a lower N loss risk equates to lower risk for sediment, phosphorus and *E.coli*. The rules as recommended, do not align with achievement of the PC 1 objectives.

5. OVERSEER AND FARM DATA SECURITY

- 5.1 Fonterra has, and has expressed, significant concerns about the security of farm data under the new Overseer business model. Anyone can now establish an account on behalf of a farmer and as account administrator can then authorise who can access the files and data held under that account.
- 5.2 While in theory a farmer could revoke access, our experience has shown the vast majority of farmers have little interest in accessing

Overseer themselves. The model is an expert user model and while the new interface has been made more attractive to the user, the data entry field complexity is unchanged and this, and the requirement to understand the extensive data input protocols, means farmers will never be the primary model users.

5.3 In my opinion if the regulator is going to require data to be entered into a monopoly model, where the owner of that model has clearly expressed a desire to commercialise that data, then the regulator has a real responsibility to ensure the data it requires to be provided cannot be commercialised or shared more widely without fully informed consent. Additionally the regulator should be considering the future direct cost of access to the regulated for model. As an effective monopoly (due to regional regulation), it would appear Overseer Ltd could charge whatever it chose for access in the future.

5.4 At paragraph 304 of the section 42A Report, the author recommends increasing the ease of regulator access to Overseer data, requiring the “...*provision of electronic access to the farms Overseer information.*” This appears to anticipate unfettered Council access to a farmer’s Overseer accounts. Fonterra would like to see much better recognition of the data and privacy risks when a monopoly business with a commercial agenda provides direct access for the regulator to a farmer account. To be clear, we are not opposed to the use of Overseer in PC 1, however the lack of any recognition of data protection responsibility from the Council and the section 42A Report is concerning. The Scorecard approach that reduces the reliance on Overseer, as described in earlier Fonterra evidence, whereby farmer data is entered directly to a calculation engine managed by the Council, would go some considerable way to addressing the data security and monopoly model concerns.

6. CERTIFIED INDUSTRY SCHEME (CIS)

6.1 The Fonterra position is that the Certified Industry Scheme (CIS) approach in the Proposed Plan is a pragmatic method developed by the

Collaborative Stakeholder Group that recognises that the Council will not be able to implement the rollout and ongoing management of FEPs and the NRP without industry / sector support. That is, the task is simply too large and it is not realistic to expect the Council to retain the capacity to be able to undertake the task in any reasonable timeframe.

- 6.2 The fundamental value proposition of a CIS for Fonterra and Fonterra supplying farmers is that the method can decrease bureaucratic processes and speed up the on farm uptake of good farming practices. Fonterra has systems and processes that will mean farmers receive far more support than they would through a Council managed consent pathway. Based on my knowledge of Fonterra's systems, capacity and commitment to a CIS programme, it is my view that the required change will occur faster and with less resistance, under a well managed CIS than under a Council managed resource consent regime. Fonterra does not intend to duplicate Council consent processes, and the associated costs, that would be the result of the Officers recommendations being accepted.
- 6.3 The Lake Taupo regulations, while arguably appropriate for an iconic lake catchment, have been costly for ratepayers and farmers and resource hungry for the regional council to implement. For the initial management of around 80 farms (7 dairy farms), I understand 3 FTEs were employed. To pay for the regulation in this catchment a specific rate for all Waikato ratepayers was applied for some years. Council staff must be very aware of the impracticality of trying to replicate such an approach across thousands of farms in the Waikato/Waipā catchments. The changes being recommended in the section 42A Report around removal of the CIS and requiring discretionary consents for most land use activities will, simply put, result in regulatory failure – the Council has neither the capacity nor the capability to manage what is being recommended. Horizons One Plan should provide a strong warning that a well-intended plan will fail if implementation limitations have not been understood and considered as part of regulatory design.

- 6.4 At paragraph 310(2) the section 42A Report provides this somewhat cryptic rationale for effectively recommending the removal of the CIS. *“Officers understand that during the development of PC1 there was an expectation that CIS would carry much of the burden of educating farmers and assisting with FEP’s and their implementation. Given the nature of the submissions and some of the policy issues discussed elsewhere, Officers question whether those assumptions about the benefits of CISs are either realistic or worth the risk.”*
- 6.5 The section 42A Report provides no indication that the author is aware of the Fonterra CIS application made to the Council or to the extensive discussions between Fonterra and Council staff on this matter (and to be fair that was not part of Fonterra’s submission). It is not clear to me which submissions have caused the section 42A Report authors to question the commitment of industry to *“educating farmers and assisting with FEPs and their implementation”* but I can categorically state to the Hearing Panel that Fonterra’s commitment to the delivery of those benefits is undiminished.
- 6.6 At paragraph 807 the section 42A Report authors explicitly acknowledge the additional implementation burden that the recommended changes would lead to and considers that therefore *“It may be necessary to stage implementation over a longer period or to prioritise particular areas or types of activities.”* While this seems to recognise a significant implementation risk there is no mention of likely impact of this change on the achievement of the PC 1 objectives.
- 6.7 I do not accept many of the comments about the CIS and permitted activity status that the section 42A Report covers. Fonterra’s legal and planning response on this matter are covered in our legal submissions and Mr Willis’ planning evidence. From a practical implementation perspective I believe that the Fonterra CIS application that is already with the Council’s Chief Executive Officer, provides answers to many of the concerns that the section 42A (and some submissions) raise. I have appended the key application documents to my evidence as Appendix 1.

7. FARM ENVIRONMENT PLANS

- 7.1 Fonterra has a strategic goal to have all supplying farms around New Zealand operating under a FEP by 2025. These FEPs will be delivered to an agreed standard (to the regulatory standard where that has been determined) by appropriately qualified advisors and will put in place timebound actions to ensure all farms are operating in a manner consistent with good farming practices (at a minimum). Fonterra developed FEPs will be kept “live” through ongoing monitoring, reporting and support including follow up farm visits at regular intervals.
- 7.2 Fonterra supports the use of FEPs in the Waikato / Waipa catchments as the primary method to identify critical source areas and contaminant loss risks. We believe there are some opportunities to further clarify the FEP approach detail in PC 1 but the fundamental requirements are sound.
- 7.3 I note again that it is the Fonterra position that all farms (other than very small farms that do not carry out any high risk practices), should be required to have an FEP and to implement the actions within that plan.
- 7.4 The section 42A Report considers the issue of prioritisation of FEP rollout. At paragraph [598], the Officers use the Fonterra submission (that everyone should be required to implement FEPs earlier rather than later), to consider that dairy (and CVP) FEPs should be prioritised “*as this would assist with achieving the necessary reductions in contaminant losses in the shortest time*”. It is entirely unclear to Fonterra why this recommendation would be expected to speed up the reductions in those contaminants that are more often linked to slope / soil instability and erosion / stock in water. Again it appears that the officers are focussing on nitrogen ahead of the other contaminants.
- 7.5 While the Fonterra commitment to FEPs will remain unchanged, if the recommendations result in the CIS provisions being removed (or rendered irrelevant), Fonterra will not be in a position to proactively manage the speed of FEP rollout which will undoubtedly be constrained

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by the ability of WRC to consider and issue thousands of resource consents.

7.6 I have appended a Fonterra FEP as Appendix 2.



Richard Allen

May 2019