

**BEFORE THE HEARINGS PANEL APPOINTED BY
WAIKATO REGIONAL COUNCIL**

AND IN THE MATTER	of Proposed Change 1 to the Waikato Regional Plan
BETWEEN	Royal Forest and Bird Protection Society of New Zealand Inc
	Submitter
AND	Waikato Regional Council
	Consent Authority

**SUBMISSIONS OF COUNSEL FOR THE ROYAL FOREST AND BIRD
PROTECTION SOCIETY OF NEW ZEALAND INCORPORATED ON BLOCK 2**

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Royal Forest and Bird Protection Society of New Zealand Inc
PO Box 2516
Christchurch
Email: p.anderson@forestandbird.org.nz
Tel: 021 2866992
Solicitor acting: Peter Anderson

MAY IT PLEASE THE COMMISSIONERS

1. The recommended changes in the s 42A report are a significant and welcome improvement on the notified version. However, a number of important deficiencies remain which need to be addressed. The key improvements are:
 - a. inclusion of requirements for reductions in diffuse discharges beyond the 75th percentile of dairy farmers; and
 - b. the strengthening of rules.
2. Forest & Bird also supports the retention of the provisions regarding stock access.
3. The key deficiencies are:
 - a. the ongoing failure to provide any indication of how the long term freshwater outcome will be achieved after 2026, when the plan will be operative;
 - b. increased uncertainty of the nitrogen reference point approach to provide a basis for nutrient allocation, specifically, it is uncertain whether comparable nitrogen loss information will be provided to council from farming activities;
 - c. the use of “*clear/real and enduring reductions*” as the basis for granting consents without any clarity as to what these reductions are to achieve;
 - d. the failure to provide any indication as to how reductions in the 50th percentile of dairy farmers will be achieved;
 - e. a reliance of farm plans to achieve good management/farm practice, without being clear on what is to be achieved and the lack of any guidance on GFP; and
 - f. providing the Chief Executive of the Waikato Regional Council with discretion to make decisions on critical issues when those matters should be contained in the plan.
4. The impression from reading the s 42A report is that more time would have resulted in a better product, as there are many instances of poor drafting and inconsistencies between objectives, policies and rules. Obvious instances include:
 - a. inclusion of the 50th percentile in policy but not in the matters of discretion for the rules that implement the policy;

- b. the failure to include reference to stock exclusion in the policies ; and
 - c. matters of discretion not being framed as matters of discretion.
5. Care is needed to ensure similar errors are not included in the final version.
6. These submissions generally follow the structure of the s 42A report.

C1. DIFFUSE DISCHARGE MANAGEMENT:

7. There are a number of issues that arise with respect to diffuse discharge management. These submissions address issues relating to Overseer, including the use of other model, the nitrogen reference point (NRP) including Schedule B, subdivision and the five year rolling average.

C1.1 Nitrogen Reference Point and Overseer

Preference for overseer as default model

8. The definition of NRP provides for the use of Overseer, or some “*alternative model approved by the Chief Executive of the Waikato Regional Council*”. Forest & Bird:
- a. does not have a particular preference for Overseer;
 - b. considers there are a number of significant risks associated with approving alternative models including:
 - i. as indicated by the s 42A report¹, the inability to aggregate losses if different models are used;
 - ii. the management of swapping between models (will gaming occur where farmers can select the model that provides the most advantageous result?).
9. The s42A recommended wording for Schedule B² does not provide any guidance for the approval of alternative models. It is submitted that policy direction is required to address the risks above, and any others. This would occur by giving policy direction on when alternative models should be approved, to ensure these risks do not eventuate.

¹ Para 126 s42A

² Para 126 s42A

Definition of Nitrogen Reference Point

10. Forest & Bird support the s42A officers intent to simplify the nitrogen reference point (NRP) definition and deal with operational detail in Schedule B.³ The s 42A report recommends the following definition:

The nitrogen discharge benchmark established for a farm, when the farm system in place during the reference period is modelled using the most recent version of the Overseer model (or an alternative model approved by the Chief Executive Officer of the Waikato Regional Council) as described in Schedule B.

11. The phrase “nitrogen discharge benchmark” is not explained or used elsewhere. It is submitted that it is not clear how this differs, if at all, from the “nitrogen reference point”. The word “benchmark” should be deleted.

Schedule B

12. In its original submission, Forest & Bird sought that the:

- a. baseline for NRP is a 24 month period during the two financial years 2014/2015 and 2015/2016;
- b. the NRP is the average loss (not highest as the proposed wording provides, see explanation at para 30 s42A); and
- c. that the most recent version of Overseer is used.

13. Forest & Bird accepts the use of a two year reference period set out in Schedule B(d).

14. However, Forest & Bird still seeks that the NRP is determined on an average nitrogen loss over this period. The average is used in Bay of Plenty. The S42A acknowledges similar submissions on this issue⁴ and states that they will be addressed later the section. However, there does not appear to be any specific analysis of these submissions, nor has the relevant wording in Schedule B(b) been amended to address these submissions.

³ para 199 s42A

⁴ para 121 s42A

15. Forest & Bird maintains the submission that the average, not maximum should be used. That would inappropriately allow for increases in circumstances where the maximum use is higher than the average use, contrary to the objectives of the plan. For example, if the highest was an unusually high year it would allow a farmer to operate with greater losses than historic use.
16. Forest & Bird supports the s42A offers amendment to Schedule B to ensure the most recent version of Overseer is used, and their suggestion that the rules are amended to require ongoing compliance with the last available NRP value modelled by Overseer where a subscription to Overseer is not maintained.⁵

Subdivision

17. The officers have not given their recommendation yet on how NRP is determined when a farm is subdivided or land is added to the farm. Forest & Bird support a consent requirement to establish a new NRP where properties are amalgamated or subdivided as discretionary activity.⁶

The 5 year rolling average

18. Rule 3.11.5.4 as notified includes a matter of discretion (iii), which requires no increase on the 5 year rolling average nitrogen losses from Overseer.
19. Forest & Bird submitted⁷ on Rule 3.11.5.4 seeking measures to ensure that the diffuse discharge of nitrogen, including as measured by the five-year-rolling average, would be amended to make it clear that reductions are expected in accordance with Objective 3 and Policy 2.
20. The S42A report recommends that farmers are given a choice through the consent process of annual Overseer modelling, or of providing information annually that demonstrates that the key farm parameters that influence the farm's nitrogen leaching rates, are not changing. This is achieved by amendments to remove matter of discretion (iii) in Rule 3.11.5.4. This removes any requirement in the plan for a 5 year rolling average to an optional method in a FEP under Schedule 1.

⁵ para 175-177 s 42A

⁶ As proposed by para 201 s42A

⁷ Forest & Bird submission, paragraph 44, page 7 and submission on specific plan provisions page 28.

21. The s42A amendments⁸ include a new matter of discretion Rule 3.11.5.4(ix), which provides:

Information to be provided to show that the property is being managed in a way that would not cause an increase in loss of contaminants, which may include annual Overseer modelling for the property or enterprise, or information on matters such as stocking rate, fertiliser application, imported feed and cropping.

22. This is not framed as a matter of discretion.

23. The purpose is to provide for choice, however it is uncertain and not specific to nitrogen loss. This could result in an averaging of contaminant loss across different contaminants, rather than ensuring here is no increase of nitrogen and relying on other measures to address other contaminants.

24. Forest & Bird considers that the amendments to Rule 3.11.5.4 do not resolve its submission. Aside from not being framed as a matter of discretion, the recommended amendments create a disconnect with Policy 1, which provides for specific reductions with respect to the 75th and 50th percentile dairy farmers and clear and enduring reductions for others. Leaving aside the 75th percentile of dairy farmer which is dealt with in matter of discretion (iv), recommended matter of discretion (ix) is inconsistent with the Policy 1 direction for clear and enduring losses, in that it only provides for no increase in losses.

25. Forest & Bird has sought changes with respect to Policy 1 and maintains its submission and seeks that Rule 3.11.5.4 implements the objectives and policies, including the requirement for reductions in losses.

C1.2 Policy 1 and the overall rule framework

26. The s42A recommended amendments clarify the policy direction by incorporating Policy 6 in Policy 1 and moving GMP/FEP to Policy 2.

27. Forest & Bird supports the recommendation that “both Policy 1 and 2 be amended to specifically recognise the catchment-wide view as well as sub-catchments”⁹ on the basis that this ensures any sub-catchment nutrient and sediment loss, occur

⁸ Shown in appendix C, relates to considerations at para 169 of the s42A report.

⁹ para 295 s42A

within environmental limits and would not compromise a catchment wide outcomes.

28. This is consistent with Policy C1 of the National Policy Statement for Freshwater Management provides for a mountains to the sea approach and:

- a. requires consideration of water quality throughout the catchment, not as an overall averaged outcome; and
- b. includes freshwater quality effects on coastal waters.

29. Forest & Bird made submissions on Policies 1, 2 and 6 which remain unresolved in the amended policies. I will address the concerns raised in respect of the amended policies with reference to the notified policies where relevant. In particular, the key aspects of Policy 1 as amended by s42A recommendations which are addressed in these submissions are:

- a. incorporation of aspects of NRP from Policy 2;
- b. requirement for GFP or better;
- c. NRP only “where possible”;
- d. Enabling low level contaminant discharges;
- e. moderate to high level discharges must be reduced proportionate to the amount of discharge and water quality improvements required for the sub-catchment;
- f. the use of the 75th and 50th percentiles;
- g. requiring controls in resources consents where GFP is not adopted;
- h. incorporates Policy 6, including direction on increased diffuse discharge losses:
 - i. generally granting consent applications that demonstrate reductions of four contaminants;
 - ii. generally not granting land use change that increases intensity of use;
- i. stock exclusion.

30. Forest & Bird sought significant changes to the Policy 6 direction on managing land use change. Land use change is now captured by Policy 1(b3) and 1(b4). Forest & Birds concerns remain unresolved and are discussed under C1.5 Land use below.

Nitrogen Reference Point

31. As discussed above, Forest & Bird has some concerns with the approach taken to defining and determining NRP. However, despite these concerns, Forest & Bird is generally supportive of NRP as a quantifiable measure for nitrogen loss at the property scale which enables Council to calculate aggregate nitrogen loss to avoid over allocation at the sub-catchment, FMU, and catchment scale.
32. We are concerned that the s42A recommended “where possible” approach to NRP in Policy 1(a2) will detract from the Councils ability to quantify nitrogen loss and to enforce its plan. It is important that Council establishes a way to measure nutrient loss which is comparable and quantifiable cumulatively at the sub-catchment, FMU and catchment level, to support an allocation framework which avoids over allocation as required by the NPSFM. If there are to be exceptions to the requirement to generate a NRP these should:
- a. not undermine the ability to measure nutrient losses at the catchment level;
 - b. be kept as narrow as possible; and
 - c. be spelt out in the policy, rather than the use of the vague phrase “where possible”.

Good Farming Practices

33. The policy direction for all farming to operate at GFP or better is consistent with Forest & Bird’s submission, on the assumption that GFP is similar to a good management practice approach.
34. However, there is some uncertainty as to the expectations under the alternative to adopting GFP in Policy 1(b2). It is not consistent with a requirement for everyone to work at GFP or better and then allow exceptions, particularly where the justification (contaminant losses will be reducing) is vague. This raises the following questions:
- a. How much of a reduction is required to justify not adopting GFP?
 - b. How does it fit with the requirement in Policy (b3) and (b4) to make clear and enduring reductions?

35. In my submission, Policy 1(b2) needs to be reworded to ensure consistency with Policy 1(a1), ensuring farming activities are operating at GFP or better.

Policy 1(b)

36. Forest & Bird is supportive of the intent behind Policy 1(b). However, there are a number of issues associated with the drafting:
- a. The policy title is “diffuse discharge management” but Policy 1(b) refers to “discharges to water bodies” which creates confusion as the objectives refer to discharges to land and it is unclear how “discharges to water bodies” applies to land use applications which involve diffuse discharges;
 - b. The reference to “*water quality improvements required in the sub-catchment*” is also unclear as the plan does not require water quality improvements in sub-catchments. If this is an attempt to implement Objective 1 and 3 and the requirement to meet Table 3.1.11, it is flawed because this table refers to catchments and lake FMUs but not sub catchments.
 - c. It refers to proportionate reductions where there are moderate to high levels of discharge but Rule 3.11.5.2A (a controlled rule for “medium intensity farming”) does not require any reductions except meeting GFP.
37. These issues are such that Policy 1(b) is relatively meaningless. The policy should be amended so that it to more clearly implement the objective.

Stock exclusion

38. The s42A suggests that the stock exclusion requirements from Policy 2 will be transferred to Policy 1.¹⁰ However, in what appears to be an oversight, the requirement for completing stock exclusion within 3 years under Farm Environment Plans has not been incorporated into Policy 1.
39. This appears to be an oversight and Forest & Bird has no objection to this requirement going into Policy 1, provided this does in fact occur.

Rule framework - focus on N and the four contaminants, the rule cascade approach and the separation of land use s9 and discharges s15

¹⁰ para 352

40. PC1 relies on nitrogen as the basis for managing nutrient losses in relation to farming operations¹¹ on the basis that nitrogen is the most easily quantified nutrient loss under current modelling tools. Forest & Bird accepts this on the basis that quantifying nutrient loss is necessary to provide certainty for avoiding over allocation.
41. The s 42A report recommends a cascade of rules from permitted to non-complying. A key recommendation is the use of restricted discretionary status for Rules 3.11.5.3 and 4 instead of permitted and controlled respectively. In principle, Forest & Bird:
- a. supports a clear cascade approach starting with permitted activities through to the more restrictive activity classifications,
 - b. supports the amendments to avoid combined activity status rules.
 - c. agrees with the concerns expressed in the s 42A report regarding the use of controlled activity status;
 - d. considers that, except in limited situations, that there is clear evidence and a sound basis for requiring full consenting processes where applications can be declined;
 - e. acknowledges that more onerous activity status, and potentially more significant investigation of losses of all four contaminants in order to confirm that losses are not increasing (and preferably are reducing) will lead to increased complexity, cost and time commitments, although this needs to be compared against a controlled activity, rather than no consent; and
 - f. consider that adopting effective approach to nutrient loss is paramount and that the Council will need to recognise costs and resourcing to implement this.
42. Forest & Bird does not necessarily oppose a controlled activity rule for medium intensity farming but considers that such a rule needs to have a proper foundation. At the current time Forest & Bird does not support Rule 3.11.5.2A as recommended by the s 42A report¹² as there is no evidence to support it.

New section 15 Rules

¹¹ para 288/291 s42A

¹² para 293 s42A

43. The S42A report recommends the introduction of new rules permitting incidental discharges.
44. Section 70 is relevant to the introduction of such rules, requiring that certain effects, including cumulative effects, do not occur as the result of permitted rules, providing:

Rules about discharges

- (1) Before a regional council includes in a regional plan a rule that allows as a permitted activity—
- (a) a discharge of a contaminant or water into water; or
 - (b) a discharge of a contaminant onto or into land in circumstances which may result in that contaminant (or any other contaminant emanating as a result of natural processes from that contaminant) entering water,—
- the regional council shall be satisfied that none of the following effects are likely to arise in the receiving waters, after reasonable mixing, as a result of the discharge of the contaminant (**either by itself or in combination with the same, similar, or other contaminants**):
- (c) the production of conspicuous oil or grease films, scums or foams, or floatable or suspended materials:
 - (d) any conspicuous change in the colour or visual clarity:
 - (e) any emission of objectionable odour:
 - (f) the rendering of fresh water unsuitable for consumption by farm animals:
 - (g) any significant adverse effects on aquatic life.

45. The difficulty with recommended permitted rule 3.11.5.8 is that the cumulative effects of the discharges of nitrogen, phosphorous, sediment and microbial contaminants are significant. This is the very reason that PC is required.
46. Section 70 is not satisfied by simply putting conditions on a permitted activity that replicate (c) - (g). This is because it does not address the cumulative nature of the effects, which is required by s 70.
47. It is also not clear why s 70(1)(e) was not included in the proposed rule.

C1.3 Policy 2 and Farm Environment Plans

48. FEPs are a critical aspect of the way in which the vision and strategy will be achieved under PC1. Forest & Bird's submission recognised the key role for FEP in PC1 and sought:
- a. an audit requirement to confirm that farm plans were being implemented and what impact this was having on water quality meeting the targets/limits and the identification of non-compliance with FEPs to ensure effectiveness of the plan;

- b. the requirements should not be less than those required by Environment Canterbury's Farm Environment Plan schedule 7 of their Land and Water Regional Plan.

49. The approach put forward in the s 42A report places significant reliance on GFP as the primary method to manage diffuse discharges in the first instance. Policy 2 as amended by the s42A now sets clear direction to "reduce catchment-wide and sub-catchment-wide diffuse discharges of nitrogen, phosphorus, sediment and microbial pathogens from farming activities on properties and enterprises, through Farm Environment Plans:" However, the requirements for FEP set out in Policy 2 (a1)-(b2) are less certain.

50. Policy 2 (a1)-(b2) requirements for FEP's relate to:

- a. Good Farming Practice (GFP);
- b. a tailored approach;
- c. the level of rigor being the same for consent holders where they are member of a Certified Sector Scheme or not; and
- d. flexibility to update FEPs so that measures can be adopted to further reduce diffuse discharges over time.

51. The definition for GFP is the same as previously defined for GMP. The justification for changing GMP to GFP is not clear in our view. The Canterbury Regional Land and Water Plan (CLWRP) uses a GMP approach as part of their FEP requirements. That GMP guidance sits outside their plan in an industry agreed document. The CLWRP also includes a schedule on FEP, which sets out specific requirements for a number of farming activities. However, this is not relied on for FEPs. The FEP approach suggested in the s42A talks about principles, not specific requirements, and appears to be more inline with the GMP approach used in Canterbury.

52. Either way, Forest & Bird still has significant concerns with the uncertainty of what GMP/GFP would require under PC1. There remains little to no information in the plan on what GFP requires.

53. The GFP approach considered in the s42A and set out in the paper by the Council's HRWO Implementation project team¹³ purports to be similar to that used by ECan. However, the approaches are used in significantly different contexts:
- a. the requirements in the CLWRP relating to FEP requirements do not rely on GMP alone but require quantifying nutrient loss and achieving a GMP loss rate of better, supported by Good Management Practice;
 - b. the approach recommended for PC1, is to use GFP as a qualitative approach, supported by a quantitative nutrient loss rate where possible and it appears that both the GFP detail and any N loss rate would be FEP requirements rather than rule or consent conditions.
54. The s42A recommendation that PC1 relies on industry agreed practices and actions, which are not set out in the plan or available is problematic. In addition, it is not clear what "industry" is being referred to. This does not recognise any expertise necessary to provide direction with respect to maintaining or enhancing environmental values.
55. Without the GFP information it is not possible to say whether those practices are appropriate or sufficient as a qualitative approach.
56. We understand that the FEP detail is a topic for Block 3. However, we want to be clear that FEP is unlikely to be a sound approach if it relies on GFP and a future process it to be use to establish GFP guidance.
57. If an FEP approach is retained in the plan, we agree with the officers¹⁴ that specific guidance needs to be set out in the policies of PC1, so that the content and framework for FEP's is clear:

The reasoning for a number of adjustments to the FEP framework have been set out above. It is recommended that Policy 2 be refocused so that it provides clarity and direction in relation to FEPs. The other components of Policy 2 are recommended to be shifted to Policy 1. FEP's are, as explained above, a significant component of the recommendations on PC1. There is considerable reliance on high-quality FEPs that implement of Good Farming Practice, with timely and robust implementation, in order

¹³ Page 61 s 42A

¹⁴ Para 369, s 42A

to achieve the outcomes of PC1 and be a first (and significant) step towards giving effect to the Vision and Strategy. Therefore, Officers consider it appropriate that specific guidance is set out in the policies of PC1, so that the content and framework for FEP's is clear.

58. Forest & Bird is not opposed to the concept behind FEP's as a method of achieving GFP. However it is clear than more than simply GFP is necessary to achieve the vision and strategy GFP. If the s 42A recommendations are adopted, FEPs would have no part to play achieving the reductions beyond GFP.

C1.4 REDUCTIONS (75TH AND 50TH PERCENTILE)

59. Beyond GFP, PC1 as notified targeted the 75th percentile of dairy farmers as the next step to achieve nutrient loss reductions. Forest & Bird was critical of this approach.
60. The criticisms have been considered by the s 42A, which retains the approach of requiring the 75th percentile of dairy farmers to reduce so that they are within the 75th percentile and recommends that farmers between the 50th and 75th percentiles are now required to demonstrate "real and enduring" reductions in nitrogen leaching.
61. Forest & Bird maintains its criticism of the 75th percentile approach. The s 42A report recommends a rewrite of Policy 5 so that it provides that everyone is required to contribute to reductions and this needs to start immediately.¹⁵ An approach that provides that only some people have to contribute immediately (i.e. the percentile approach) is not consistent with this policy.
62. Targeting losses associated with a percentile is flawed and should be abandoned, in favour of an approach that requires everyone, aside from those with minimal losses to take steps, proportionate with their losses.

¹⁵ **Policy 5: Staged approach/Te Kaupapa Here 5: He huarahi wāwāhi**

To recognise that:

- a. All farmers, businesses and communities will need to contribute to achieving the water quality attribute states in Table 3.11-1; and
- b. Changes in practices and activities need to start immediately; and
- c. 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; and
- d. Responding to the reasonably foreseeable effects of climate change will mean that different regulatory and non-regulatory responses may be needed in future.

63. Aside from these high level concerns, there are real difficulties with the implementation of the percentile. There are significant problems with the definition of 75th percentile and the 50th percentile is not defined.

75th percentile

64. The definition provides a Chief Executive will determine the 75th percentile, and then identifies things that “*can*” be taken into account when making this determination.

75th percentile nitrogen leaching value: The 75th percentile value (units of kg N/ha/year) of all of the Nitrogen Reference Point values for dairy farming properties within each river (including properties within any lake Freshwater Management Unit within the relevant river Freshwater Management Unit) Freshwater Management Unit^ and which are is determined by the Chief Executive of the Waikato Regional Council and published on the Waikato Regional Council website and can be based on aggregated data supplied to the Waikato Regional Council and individual farm data received by the Waikato Regional Council by YYY.

65. This determination is referred to in Rule 3.11.5 as recommended by the s 42A report, and is proposed to have regulatory force.
66. It is not appropriate to have the operation of a permitted rule to be determined at the discretion of the Chief Executive.
67. If the 75th percentile is to be retained, a process it should be set out elsewhere, such as policy or schedule, and include dates for establishing the 75th percentile targets, not just the date of data supplied to Council.
68. Obviously a rule could not have regulatory force to impose a percentile until the percentile is determined. The implementation of this rule is therefore uncertain.
69. While the percentile approach is an improvement on what was notified, the percentile approach is flawed and should be abandoned.

50th percentile

70. The 50th percentile appears to be something of an afterthought. It has been added to Policy 1(b1) with a requirement for “*real and enduring*” reductions. However, there are no provisions to support this, including:
- a. no definition
 - b. the 50th percentile is not a matter of discretion in Rule 3.11.5.4, where the 75th percentile is referred to.

Real (clear?) and enduring reductions

71. The way the plan deals with the 50th percentile is linked to amendments recommended to Policy 6. As notified Policy 6 related to land use change and had reference to “clear and enduring” reductions in losses. The s 42A report recognises that the Forest & Bird sought the deletion of this reference and its replacement with provisions that required reductions will meet the targets in Table 3.11.1.
72. The s 42A report recommends deleting Policy 6 and incorporating it into Policy 1, with references to granting consents only if there are “*real and enduring*” reductions in diffuse discharges. This slight change in terminology does not address Forest & Birds concerns. This is similar to the proposal for the 50th percentile. The inclusion of both “real” and “clear” appears to be inadvertent.
73. In relation to Policy 6 the s 42A report acknowledges but rejects concerns about the lack of clarity in the term “clear and enduring losses”.

Some submitters seek clarity as to what is meant by clear and enduring decreases in contaminant losses. The Officers consider that the words “clear and enduring decreases” are simple, clear and do not suggest any uncertainty in terms of expectations. Officers consider that the FEP has a key role to play in providing confidence and on-the-ground actions and feedback to ensure there actually are “clear and enduring decreases”. However, the Officers acknowledge that the plan use the words “decreasing and “reducing” (or variations thereof) and that it would be more consistent to use the words “reducing” or “reductions” throughout. Amendments are recommended accordingly.

74. The s 42A report does not address this with respect to the 50th percentile, presumably because it is new and submitters did not have the opportunity to submit on it.
75. It is submitted that the “clear and enduring decreases” is uncertain. The phrase “clear and enduring decreases” is context specific. The meaning depends on what is sought to be achieved. If the objective is a reduction of 5% then a 2% reduction, if sustained, would be clear and enduring. However if the objective was a 50% reduction then the same 2% reduction would not be clear and enduring.
76. The suggestion that the FEPs will provide confidence that the “clear and enduring reductions” will occur is misguided. This is the wrong way around. FEPs should be driven by policy and will fail if the policy is ambiguous, as it currently is.

77. This problem stems from a failure in the objectives. The objectives deal with what is required up until 2026 and what is required by 2096 but provides no guidance as to what should occur in between. The effect of this is that the policies are unable to provide the necessary clarity, because it is not clear what outcome the policies are trying to achieve, particularly after 2026.

78. In my submission, the reference to clear/real and enduring reductions is unclear, but the problems cannot be rectified in the absence of objective that set out what is sought to be achieved.

C1.5 LAND USE CHANGE

79. As outlined earlier, Policy 6, like the the 75th and 50th percentiles provisions, uses the uncertain terminology of clear/real and enduring reductions in losses.

80. Forest & Bird supports the underlying approach to managing “land use change, including the incorporation of Policy 6 into Policy 1. However Forest & Bird does not support the use of “clear and enduring” for reasons outlined previously.

81. In order to be meaningful this policy has to provide more clarity as to the reductions that are required. This can be achieved by linking the reductions to water quality limits that are sought to be achieved in the objectives.

Rule 3.11.5.7

82. Rule 3.11.5.7 is a non-complying rule for certain land uses. Forest & Bird supports this rule for the same reasons as set out in the s 42A report.

C1.6 OTHER RELEVANT POLICIES AND SCHEDULES

Definition: Certified Farm Nutrient Advisor

83. Forest & Bird sought inclusion of the qualification requirement and this has been supported by the s 42A report.

Definition: Farming activities.

84. Forest & Bird accept the s 42A reasons for excluding municipal wastewater from the definition. We consider the definition could be improved by including reference to chapter 3.5 so that Clause (b) of the definition provides “the growing of crops on land irrigated by consented municipal wastewater discharges addressed under Chapter 3.5;”

Definition: Livestock crossing structure

85. Forest & Bird supported this definition as notified and support the changes recommended in the s 42A report specifically the reference to ensuring stock do not access the bed of the water body.

Definition: Point source discharge

86. Forest & Bird sought changes to improve this definition, specifically that it “means a discharge from a specific and identifiable outlet onto or into land, a water body or the sea”.
87. The s42A report recommends adding the word “facility”. Forest & Bird does not support this because it then defines a discharge as a facility. It is not good drafting to define a verb (to discharge) as a noun (a facility).
88. Forest & Bird considers that an appropriate definition would be “a discharge from a stationary or fixed facility onto or into land, a water body or the sea and includes the irrigation into or onto land from industrial and wastewater systems”

C3. CERTIFIED SECTOR SCHEMES

89. The CSS concept, previously Certified Industry Schemes (CIS), is intended to manage permitted activities with a comparable level of scrutiny to consented activities, but with industry providing the oversight instead of WRC.¹⁶
90. Forest & Bird opposed the concept of CISs in the ground that it would allow WRC to effectively outsource its statutory duties, including responsibility for ensuring farms are operating in accordance with the plan.
91. Section 34A provides for the delegation of a local authority’s powers. Policy 3A recommended by the s42A report seeks to achieve the same outcome (delegation) by way of a contractual relationship. This is ultra vires.
92. Forest & Bird retains the view that all provisions relating to CSS should be deleted. It is not appropriate for the Council to contract out its monitoring and enforcement function to an sector group through a contract.

C4. STOCK EXCLUSION

¹⁶ para 783 s42A

93. In its submission, Forest & Bird sought the retention of the provisions regarding stock access. This has largely been supported by the s 42A report and we agree with this analysis. This is subject to the qualification that reference to the stock exclusion provisions is made within the policies, as the s 42A intended but did not include.

C5. MAORI TREATY SETTLEMENT LAND

94. Forest & Bird addressed these provisions in Block 1, noting the conflict between allowing an increase in losses form tangata whenua ancestral lands and meeting the strategy and vision. There is an obvious conflict with the objective and policy of allowing “flexibility” in the development of tangata whenua ancestral lands with a non-complying activity for land use intensification. This has obviously vexed the s 42A report writes who did not make a recommendation on this with respect to the policy.

95. The submissions made in Block 1 are repeated:

If it is proposed to allow for development and intensification of tangata whenua ancestral lands then this needs to be made express and the implications of this in terms of reductions required elsewhere needs to be considered. If allowing intensification of tangata whenua ancestral land is to occur, then:

- a. the increase in losses that will occur needs to be quantified; and
- b. where this will be offset (by an increased reduction in losses) needs to be identified.

96. Simply allowing intensification would be would be contrary to both the vision and strategy and the NPSFM, particularly Te Mana o Te Wai.

97. This is another example of the implications of provisions not being properly thought through.

C6. URBAN/POINT SOURCE DISCHARGES

98. Forest & Bird:

- a. does not take issue with the way in the s 42A report addresses regionally significant infrastructure;

- b. supports the s42A reports recommended amendments to Policy 13 (consent duration), in particular accepting Forest & Bird submission point regarding reference to water quality attribute states;
- c. considers that the provisions regarding offsets could be improved.

Offsets

99. Offsets are defined as

Offsets: for the purposes of Chapter 3.11 means for a specific contaminant/s an action that reduces residual adverse effects of that contaminant on water quality.

100. This definition conflates offsets with mitigation and fails to recognise that offsets are a measure to be taken after appropriate steps to avoid remedy and mitigate adverse effects. That offsetting follows avoidance and mitigation has been recognised in the policy, which creates an inconsistency. This can be clarified by removing the references to avoiding and mitigating effects and including it in the definition. This could be achieved by adding the words *“taken after appropriate measures to avoid remedy and mitigate adverse effects”* after action.

101. Policy 11 also repeats aspects of the definition of offsetting in the policy, specifically that offsets reduce residual effects. This duplication is unnecessary and can be deleted from the policy.

CONCLUSION

102. Some elements of PC1, such as stock exclusion, are appropriate, provided they are referred to in the policies.

103. However, with respect to diffuse discharges, there is a lot of work to be done before PC1 is of an acceptable standard. The flaws identified in the objectives in Block 1 have had a flow on effect into the policies and rules, which give no confidence that the desired improvements in water quality will be achieved. In fact, the only conclusion is that the PC1 in its current form will not achieve the desired improvements.

104. The objectives need to be resolved first. Key issues like the use of percentiles and addressing the post 2026 lacuna need to be addressed. It is not possible to draft

good policy without these issues and the objectives being settled. Only then will it be possible to draft policies to give effect to those policies.

28 June 2019

A handwritten signature in black ink, appearing to read "P Anderson", is centered on a small white rectangular background.

Peter Anderson
Counsel for Royal Forest and Bird Protection Society of New Zealand Incorporated