

IN THE MATTER of the Resource Management Act 1991

AND

**IN THE MATTER of the hearing of submissions on Proposed Plan Change
1 (and Variation 1) to the Waikato Regional Plan**

TOPIC 1

**BY FEDERATED FARMERS OF NEW ZEALAND INC,
FEDERATED FARMERS OF NEW ZEALAND (WAIKATO
REGION) 1999 INCORPORATED, FEDERATED FARMERS
OF NEW ZEALAND – ROTORUA TAUPO PROVINCE
INCORPORATED, FEDERATED FARMERS OF NEW
ZEALAND (AUCKLAND PROVINCE) INCORPORATED**

(“FEDERATED FARMERS”)

Submitter with ID: 74191

**To WAIKATO REGIONAL COUNCIL
(“WRC”)**

**STATEMENT OF PRIMARY EVIDENCE OF GRANT ROBERT ECCLES
FOR FEDERATED FARMERS ON HEARING TOPIC 1**

15 February 2019



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EXECUTIVE SUMMARY

1. I set out below a summary of my evidence for this 1st hearing block.
2. I am concerned that the s32 reporting thus far undertaken for PC1, and the analysis of that reporting in the 42A report, has not been undertaken to a degree that corresponds to the scale and significance of the resource management issue addressed by PC1 and its far reaching effects.
3. It will be necessary for the Hearing Panel to decide whether the inclusion of rules in PC1 that allow some contaminants to increase in places while reducing in others (ie allowing some flexibility to address individual circumstances rather than expecting overall reductions everywhere), with the overall water quality in the Waikato and Waipa Rivers for that contaminant remaining within the relevant band (or “Attribute State”) as specified in the NPS-FM, would be inconsistent with the Vision and Strategy. . I do not consider that it is and expand on the reasons in my evidence.
4. I outline my high level concerns and views on PC1 including:
 - a. The Regional Council has acted in the face of significant uncertainty of information without properly assessing the risk of doing so as required in S32 of the RMA.
 - b. There is a disconnect between the values, objectives and policy framework in PC1 on the one hand and the broad and blunt effects of the as-notified rule suite. The values, objectives and policy framework in PC1 calls for a tailored and staged approach. The rule framework proposed by FFNZ is more suitable to the objectives and policy framework.
 - c. There is a disconnect between the freshwater objectives and the values which they have to provide for. As notified PC1’s freshwater objectives focus on limits and targets not on the desired environmental outcomes of the values.
 - d. There is a disconnect between the objective of swimmability and food gathering as stated in the Vision & Strategy (and woven through the higher order provisions of PC1) and the regulatory focus on N (which is low in the hierarchy of attributes that effects swimming conditions and food gathering water quality).
 - e. I address the lack of casual nexus between the approach that underpins PC1 and the need for overall reductions in all four contaminants throughout the catchment. I also remark that the imposition of 80 year numeric targets is a step too far at this point in time and require further development before they can be included in a regional plan.
 - f. In paragraphs 55 to 65, I set out why the long term targets and the overall reduction approach in PC1 is inappropriate.
 - g. Another concern is the inconsistent and unequitable way the Certified Industry Scheme is applied in PC1. The proposed use of Overseer in the as-notified version of PC1 will be inflexible and FFNZs proposed use of Overseer is better suited to its limitations.

5. FFNZ developed its own framework which seeks to improve water quality to give effect to both the Vision and Strategy and NPS-FM but in a way that will be fairer and create less disruption to the economic and social wellbeing of individuals and communities. In paragraphs 70 to 76 I set out briefly the FFNZ framework.
6. I also raise concerns with the insufficient flexibility in the rule and FEP framework of as-notified PC1. The FFNZ framework provides flexibility in the rule framework in terms of the five primary thresholds or trigger points for assessing farming activities.
7. In paragraphs 82 to 93 I respond to comments in the S42A report. In summary:
 - a. I do not agree with the recommendations to delete headings and explanations to objectives.
 - b. The fundamental concerns with the “overall reductions” approach underpinning PC1, and the setting of 80 year numeric targets, that I outline in my evidence inform my concerns with Objective 1 and 3.
 - c. In regard to Objective 2 there is no reporting or evidence that indicates positive economic effects from the introduction of PC1. In fact the opposite holds true. Also to the extent that social wellbeing can be tied to economics, there is no evidence that the social wellbeing of people and communities will be enabled. I consider that Objective 2 in its current form and as recommended to be amended by the 42A report does not give effect to the purpose of the RMA.

INTRODUCTION

8. My full name is Grant Robert Eccles. I am a principal planner for Tonkin and Taylor based in Hamilton.
9. I have been asked by Federated Farmers of New Zealand (“FFNZ”) to provide expert planning advice and assistance in respect of Proposed Plan Change 1 (and Variation 1) (“PC1”) to the Waikato Regional Plan.
10. I was the principal author of the amended planning provisions put forward with the FFNZ submission.

Qualifications and experience

11. I hold the qualification of a Bachelor of Resource and Environmental Planning from Massey University. I have 24 years’ professional planning experience and have been a planning consultant based in Hamilton for the last 22 years. I was admitted as a Member of the New Zealand Planning Institute in 2001.
12. I am familiar with and experienced in both the preparation of plans and the processing of resource consents under the Resource Management Act 1991 (“RMA”). From 2008 to 2013 I lead the review of the Ruapehu District Plan, from the inception of consultation through to the resolution of Environment Court appeals.

13. Throughout my career I have prepared submissions to District and Regional planning documents throughout the North Island on behalf of numerous clients in the private and public sector.
14. I have given expert planning evidence at local authority hearings, Environment Court, District Court, and Board of Inquiry hearings. I have provided planning assistance to the Boards of Inquiry established to hear the applications for the Te Mihi and Tauhara II Geothermal developments near Taupo, and the King Salmon Plan Change and Consent applications in the Marlborough Sounds. The King Salmon proceedings in particular involved significant consideration of effects deriving from the discharge of nitrogen to an aquatic environment, and how an adaptive management process could be applied to achieving desired environmental outcomes.
15. I am currently involved as an expert planner on behalf of Rotorua Lakes Council in the Environment Court proceedings for Proposed Plan Change 10 to the Bay of Plenty Regional Natural Resources Plan. Proposed Plan Change 10 proposes to establish a nitrogen allocation and trading regime for landuse in the Lake Rotorua groundwater catchment in order to give effect to directive objectives and policies in the Bay of Plenty Regional Policy Statement. The hearing for those appeals is set down to begin on 04 March 2019.
16. I also consider it important to note that I am the son of a dairy farmer, and grew up on a dairy farm in the Thames Valley. I also worked for several summers on a sheep and beef farm on the Kaimai Ranges. I live on a 10 acre block south-east of Hamilton where we run beef breed cattle and a small number of horses. I retain close links to the rural sector and provide advice to a number of individuals and businesses in the farming and equine industry.
17. As a result I am very aware of the myriad of current challenges facing the rural sector, and the impacts of regulatory changes on farming families and communities.

Code of conduct for expert

18. While this is a first instance hearing, I nevertheless confirm that I have read the Environment Court's Code of Conduct for Expert Witnesses as set out in the Environment Court's Practice Note 2014, and I agree to comply with it.
19. My qualifications as an expert are set out above. I confirm that the issues addressed in this brief of evidence are within my area of expertise, except where I state 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.

Scope of evidence

20. This planning evidence relates to Hearing Topic 1.
21. I have been asked to consider Topic 1 (the introduction and context of Plan Change 1 (and Variation 1) and outcomes). This includes comments on:
 - a. The relevant planning instruments and specifically the Vision & Strategy and NPS-FM;

- b. Identify significant high level concerns and views, including:
 - 1. Assessing the risk of acting or Not Acting;
 - 2. Commenting on the disconnect between values, objectives, policies and rules;
 - 3. Discussing the long term targets and the Overall reduction approach;
 - 4. Commenting briefly on Certified Industry Schemes and Overseer;
 - c. Broadly outlining FFNZ's alternative framework; and
 - d. Responding to S42A report on Topic 1.
22. My evidence first sets out a number of high level issues that I have with the as notified version of PC1. It is important that the hearing panel understands these issues going forward as they underpin the more specific relief sought by FFNZ throughout PC1.
23. In this statement, where I refer to FFNZ's submissions I am referring to FFNZ's submission on Variation 1 unless I specifically state otherwise.

RELEVANT PLANNING INSTRUMENTS

Resource Management Act

24. Section 66(1)(b) of the RMA requires a Regional Council to prepare and change any regional plan in accordance with the provisions of Part II (Purpose and Principles) of the Resource Management Act 1991 ("the RMA").
25. The purpose of the RMA as set out in section 5 of Part II is to promote the sustainable management¹ of natural and physical resources. At this point I note that the intent of PC1 to achieve improvements in the water quality of the Waikato and Waipa Rivers must, as directed by the RMA's purpose, also enable people and communities to provide for their social, economic and cultural well-being.

¹ Defined in section 5(2) to mean:

"managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural well-being and for their health and safety while—

(a) sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and

(b) safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and

(c) avoiding, remedying, or mitigating any adverse effects of activities on the environment"

26. Section 32 of the RMA requires an examination of:

"the extent to which the objectives...are the most appropriate way to achieve the purpose of this Act' (s32(1)(a));

"whether the provisions...are the most appropriate way to achieve the objectives by

- (i) 'Identifying other reasonably practicable options for achieving the objectives' and*
- (ii) 'Assessing the efficiency and effectiveness of the provisions in achieving the objectives'; and*
- (iii) 'Summarising the reasons for deciding on the provisions' (s32(1)(b))"*

In turn, an assessment under subsection section 32(1)(b)(ii) must:

(a) Identify and assess the benefits and costs of the environmental, economic, social, and cultural effects that are anticipated from the implementation of the provisions, including the opportunities for –

- (i) Economic growth that are anticipated to be provided or reduced; and*
- (ii) Employment that are anticipated to be provided or reduced; and*

(b) If practicable, quantify the benefits and costs referred to in paragraph (a); and

(c) Assess the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the provisions

27. I am concerned that the s32 reporting thus far undertaken for PC1, and the analysis of that reporting in the 42A report, has not been undertaken to a degree that corresponds to the scale and significance of the resource management issue addressed by PC1 and its far reaching effects. I will further address this matter in later sections of this evidence.

The Waikato-Tainui Raupatu Claims Waikato River Settlement Act 2010

28. The Waikato-Tainui Raupatu Claims Waikato River Settlement Act 2010 ("the River Settlement Act") amongst other things codifies the scope and the extent of the Vision and Strategy and legislated the establishment of the Waikato River Authority.

29. Section 9(1) of the River Settlement Act sets out that:

The Waikato River and its contribution to New Zealand's cultural, social, environmental, and economic wellbeing are of national importance.

30. Section 11 of the River Settlement Act set out that the Vision and Strategy in its entirety is deemed to be part of the Waikato Regional Policy Statement without the use of the process in the 1st schedule of the RMA.

31. I return to the role of the Vision and Strategy and its relationship with the RMA later in this evidence.

Interpreting the Vision and Strategy and the 80 year targets

32. The hearing panel will by now be well aware of the content of the Vision and Strategy so for brevity I will not repeat large parts of it here. The key point to note is that its over-arching purpose is to *restore and protect* the quality of the Waikato River.

The Vision and Strategy and the RMA

33. Section 12 of the River Settlement Act deals with the effect of the Vision and Strategy on Resource Management Act 1991 planning documents.
34. Section 12(1)(a) states that the Vision and Strategy prevails over any inconsistent provision in a national policy statement issued under section 52 of the Resource Management Act 1991.
35. In my view, the hearing panel needs to decide whether the inclusion of rules in PC1 that allow some contaminants to increase in places while reducing in others (ie allowing some flexibility to address individual circumstances rather than expecting overall reductions everywhere), with the overall water quality in the Waikato and Waipa Rivers for that contaminant remaining within the relevant band (or “Attribute State”) as specified in the NPS-FM, would be inconsistent with the Vision and Strategy. For example, would allowing for N to increase in places be inconsistent with the Vision and Strategy if Nitrate (Toxicity) within the Waikato River remained within the A band² of the NPS-FM?
36. Without specifically addressing it as yet, the PC1 and 42a report answer to the question set out above would appear to be yes. In my view, the clear answer based on the science underpinning the NPS-FM must be no.³
37. In addition to the above it is not clear to me what objectives of the Vision and Strategy that PC1 is aimed at achieving. The 42a reporting team⁴ believe it to be Objectives G, H and K of the Vision and Strategy. This is important because the objectives of the Vision and Strategy deal with different matters. Depending on the objective that is sought to be achieved, the need to control different contaminants becomes more or less important.
38. In all the PC1 documentation I have reviewed there is consistent reference to Objective K, which aims for waterways where swimming and food gathering is safe for people along the entire length of the river. I understand from discussions with science advisors from a range of parties to PC1 that swimmability and food gathering is primarily affected by sediment and e coli, and far less influenced by N and P.⁵ Yet PC1 seeks to exert particular control over N. The 42A report⁶ acknowledges the issues and uncertainties associated with the PC1 focus on N.

² Referred to as an Attribute State in the NPS-FM

³ Also see evidence of Dr Le Miere dated 15 February 2019 on this matter.

⁴ Para 122 of the 42A report

⁵ Also see the evidence of Dr Le Miere on this matter.

⁶ Paras 131 and 132

National Policy Statement for Freshwater Management (“NPS-FM”)

39. The NPS-FM is a NPS issued under section 52 of the RMA. It addresses the matter of national importance of the management of fresh water through a framework that considers and recognises Te Mana o te Wai⁷ as an integral part of freshwater management.
40. Objective A2 of the NPS-FM requires that *“the overall quality of fresh water within a freshwater management unit is maintained or improved while:*
- a) protecting the significant values of outstanding freshwater bodies;*
 - b) protecting the significant values of wetlands; and*
 - c) improving the quality of fresh water in water bodies that have been degraded by human activities to the point of being over-allocated.”*
41. In turn, Policy CA1 and CA2d) of the NPS-FM respectively require every regional council to identify freshwater management units (FMU's) that include all freshwater bodies within its region, and identify the values for and assign attributes to those FMU's.
42. In his evidence Dr Le Miere will provide further evidence on the policy mechanism in the NPS-FM and specifically the interplay between values, attributes, freshwater objectives and limits and targets as set out in the NPS-FM.

SIGNIFICANT ISSUES

43. Given that this is the first of a number of briefs of evidence that I will place before the Hearing Panel and that the first hearing block and 42a report covers higher level matters that have informed the objectives of PC1, I will outline now the high level concerns/views that I hold with PC1 that cumulatively inform the more provision specific discussions that will follow in this and subsequent evidence.
44. Following this section I will briefly outline the planning framework that is proposed by FFNZ to which I have contributed expert planning assistance, and the principles that underpin it. By doing so, it is my hope that the Hearing Panel can use this evidence as a reference and that repetition in my subsequent evidence briefs will be avoided.

Assessing the Risk of Acting or Not Acting

45. Section 32(2)(c) of the RMA requires an assessment of the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the provisions.

⁷ the integrated and holistic well-being of a freshwater body

46. In my view the WRC has acted in the face of significant uncertainty of information without properly assessing the risk of doing so as required by s32(2)(c) when the documented economic and social costs of PC1 are taken into account.
47. As one example, I understand that the modelling relied upon by the CSG was based on Overseer and other modelled numbers as well as numerous assumptions about what the policy mix might deliver⁸.
48. As a further example, I note that from my review of the timing of decision making in the CSG process, it would appear that the CSG recommended the PC1 approach to the WRC ahead of the economic modelling report being received. That report indicated that PC1 would generate a significant adverse effect on the regional economy in the short to medium term.⁹
49. The situation with regards to a sub-catchment approach is also illustrative of this issue. As the 42A report notes “plan change 1 has a range of objective, policy and implementation method support for sub-catchment planning”. However, WRC has thus elected to notify PC1 with an Objective and Policy framework that provides a range of support for sub-catchment planning¹⁰, but without having enough information in terms of sub-catchment detail to provide a rule structure that adequately caters for this policy approach (a disconnect between the objectives/policies and the rules is thus created). Likewise, I understand that an alternative existed of developing tailored N and P limits to apply to the wider catchment but that there is as yet inadequate science to develop such limits.

Disconnect between Values/Objectives/Policies and Rules

50. The values, objectives and policy framework in PC1 cumulatively drive toward a tailored and staged approach rather than the broad and blunt effect of the as-notified rule suite.
51. In particular, the policies contemplated a sub-catchment approach with tailored FEPs and proportionate actions. However, the as-notified rules had no regard to any of those factors. My view is that the rule framework proposed through the FFNZ submission achieves the regulatory framework contemplated by the objectives and policies.
52. Dr Le Miere is providing evidence on behalf of FFNZ on the mechanisms used in NPS-FM to identify values, assign attributes applicable to the values, formulate freshwater objectives which provides for the values and limits and targets as methods to achieve the freshwater objectives. My understanding of the evidence of Dr Le Miere is that the objectives proposed in PC1 focusses on the limits and targets in contrast to the NPS-FM approach which require that the freshwater objectives

⁸ Further, from answers given to questions by Dr Doole for WRC at the Economics and Science forum on 21 November 2018 it is apparent that the model in terms of N needed adjusting in places to maintain adequate performance when compared to monitored results in terms of attenuation. The nature and extent of those adjustments is not clear at present.

⁹ WRC, Regional and National-level economic impacts of the proposed Waikato Regional Plan Change 1, 30 August 2016

¹⁰ As set out at para 138 of the 42A report

provide for the values (and desired outcomes of the Vision & Strategy).¹¹ According to Dr Le Miere the limits and targets are methods and tools to achieve the freshwater objectives not objectives themselves. I note that the FFNZ submissions propose amendments so that objectives 1 and 3 focus on the values of the NPS-FM and the anticipated outcomes in the Vision & Strategy rather than targets and limits.

53. I refer to my evidence at paragraph 38 above on the consistent reference in PC1 to swimming and food gathering objective in the Vision & Strategy and that this is primarily affected by sediment and e coli, and far less influenced by N and P. My understanding of the evidence of Dr Le Miere is that there is a hierarchy in attributes that effect swimmability and that N is lowest in the hierarchy. Accordingly, a policy framework that over emphasises and makes too rigid the management of N will be an inefficient and ineffective means to achieve swimmability (Objective K). Yet PC1 seeks to exert particular control over N. I discuss FFNZs framework later in this evidence however I signal now that the FFNZ framework has less of an emphasis on and adopts a more flexible approach to N.
54. In my view, the overemphasis on N in PC1 is because it is the easiest of the four contaminants for regulators to focus on because a tool exists to be able to measure it - Overseer. Nonetheless the emphasis on N in the regulatory framework of PC1 is at odds with the objectives of swimming and food gathering in the higher order provisions of PC1. Later in this evidence I briefly discuss the acknowledged limitations to the reliability and applicability of Overseer, and I discuss the need for flexibility in the PC1 provisions.

The Long Term targets and the Overall reduction approach

55. I am concerned that a science based “causal nexus” has not been identified between the approach that underpins PC1 of the need for an overall reduction in all four contaminants throughout the catchment and improvement of the water quality of the Waikato and Waipa Rivers to achieve the 10 year and 80 year targets. Rather, I understand that the “overall reduction in everything everywhere” approach was driven by the CSG’s interpretation (heavily influenced by cultural considerations) of the Vision and Strategy, which in turn influenced the modelled state of water quality in the Waikato River in 1863.
56. While I support the objective of progressing towards the achievement of the Vision & Strategy and the adoption of an 80 year timeframe to recognise the long term and aspirational nature of this goal, and the enduring nature of the outcomes sought for the Waikato River, I am concerned that this aspirational and narrative goal was translated into 80 year numeric targets for each water quality attribute.
57. To me, the setting of 80 year numeric targets is a step too far at this point in time. It is simply not necessary to do so, especially in light of the fact that (amongst other things) (i) farm technology and management systems to allow the 80 year targets to be achieved do not currently exist; (ii) understanding of the wider catchment is still developing, particularly in terms of attenuation and the contested issue of load to

¹¹ Evidence of Dr Le Miere on topic 1 at [37] to [50]

come; (iii) a number of assumptions were used in the setting of the targets eg use of the NPSFM lake metric for N and phosphorous; and (iv) the Waikato River is highly modified by the Waikato Hydro Scheme.

58. Numeric targets are better to be developed in future as improved information becomes available and/or as technology changes. For the present, my view is that the adoption of a narrative approach that focuses on progress towards or assistance to achieve the water quality outcomes anticipated by the Vision & Strategy and the values by 2096 is appropriate, as set out in the amendments to Objective 1 put forward in the FFNZ submission.
59. I am concerned that the setting of the 80 year numeric targets now in tandem with the “overall reductions” approach generates false precision in the PC1 provisions, and in the consenting processes that will stem from it. This is a concern because it seems to me that if PC1 was to be made operative in its current form, applicants for resource consent to discharge an elevated level of one of the contaminants (say N) would have little or no chance of gaining consent.
60. It also concerns me that a plan change as significant as PC1 promulgated under the RMA to control surface water quality is aimed at achieving progress toward numeric targets that are highly aspirational, developed in the face of significant uncertainty of information, and that are not science based. My concern is amplified in light of the policy approach taken by PC1 that all four contaminants must reduce everywhere, and that any increase of any contaminant in any location should be prevented. Statements made in the 42a report¹² reinforce my concern.
61. It is perhaps not surprising that such a blunt and unscientific approach was adopted, given that the Vision and Strategy is the outcome of a Treaty of Waitangi settlement process with an inherent focus on redress and recognition. It is unclear to me in the legislation making process that gave rise to the Vision and Strategy whether the costs (particularly to the wider communities of interest) and benefits of providing the redress were considered in a manner similar to the RMA 1st Schedule plan making process .
62. We are now considering a plan change to give effect to the Vision and Strategy under the RMA, and the checks and balances of the 1st schedule and section 32 are in play. There is no clause in the Vision and Strategy legislation that overrules the RMA 1st schedule¹³.
63. Thus, in my view it is inadequate to fall back to the position of “because that’s what the Vision and Strategy requires” to justify the plan provisions in the face of

¹² See para 132, first bullet point

¹³ Section 13(4) of the Waikato-Tainui Raupatu Claims Waikato River Settlement Act requires every local authority, after every review of the Vision and Strategy, to review its regional or district plan to see whether it gives effect to the vision and strategy, and if the regional or district plan does not give effect to the vision and strategy, initiate an amendment to it to ensure that it does so, **using the process in Schedule 1 of the Resource Management Act 1991**. In this case, no review of the Vision and Strategy has been undertaken however this section of the River Settlement Act provides clear guidance that the RMA 1st Schedule is not “trumped” by the Vision and Strategy

uncertainty or credible and relevant challenge, as seems to be a theme inherent in the preparation of PC1 and the 42A report for Block 1¹⁴.

64. I am concerned that the overall reductions approach does not adequately take into account the documented economic and social costs of acting in that manner, and as a result a significant challenge to whether PC1 achieves the purpose of the RMA. In collaboration with other industry bodies (as well as WRC), FFNZ commissioned a case study project that identified that the costs to individual farmers for complying with “overall reductions” mitigations through FEPs are likely to be significant, with the costs for one farmer ranging from \$300,000 to \$785,000 (depending on how the as-notified stock exclusion requirements were interpreted) and \$0 to \$500,000 for other farmers in the case study.
65. It also entails that the CSG view of equity in terms of addressing water quality in the Waikato and Waipa Rivers was to adopt an overall reductions approach with a particular focus on N, and make everyone reduce by 10% and undertake annual Overseer reviews. In my view, given the costs associated with this approach, an equally appropriate alternative view of equity is that high N emitters should have to reduce and the low N emitters should have greater flexibility, provided that some bottom line attribute states or bands as set out in the in the main stem of the Waikato River are not infringed.

Certified Industry Schemes (“CIS”)

66. The 42a report questions whether the CIS provisions comply with section 70 of the RMA¹⁵. That is largely a legal question for a later hearing block. In my view the more relevant question is whether the CIS provisions are consistent and equitable in the way they are applied in the as notified PC1 provisions. In my view they are not, particularly with regards to Farm Environment Plans (FEPs).
67. For example, a farming activity that is part of a CIS operating under a FEP prepared by a Certified Farm Environment Planner (“CFEP”) is a permitted activity under Rule 3.11.5.3. A farming activity that is operating under a FEP prepared by a Certified Farm Environment Planner (“CFEP”) but which is not part of a CIS is a controlled activity under Rule 3.11.5.4, with the matters of control including the content of the FEP. The question that arises is this:
- Both FEPs are prepared by a CFEP approved and audited by WRC, so why does WRC need to require a consent and reserve control over the content of the FEP for the farm that is not part of a CIS?*
68. Either the WRC has faith in the CFEP certification and audit programme, or it does not. It is difficult to see how a farm operation being part of a CIS will provide any additional quality assurance to a FEP that is prepared by a CFEP when compared to a FEP prepared by a CFEP for a farm that is not part of a CIS. I will return to this

¹⁴ See for example para 285 of the 42A report

¹⁵ Para 134

overall matter in my evidence for the appropriate hearing block considering FEPs in more detail.

The use of Overseer

69. Overseer is a matter scheduled for hearing topic 2. Accordingly I will be brief as I will go into this in more detail in the hearing Topic 2. However comparing the use of Overseer at a high level, I signal now that I consider that FFNZ's use of Overseer in its framework better deals with the limitations of Overseer and provides greater flexibility when compared to as-notified PC1. This is one of the reasons at a high level why I consider that FFNZ framework is more efficient and effective in achieving the objectives of PC1.

BRIEF OUTLINE OF FEDERATED FARMERS FRAMEWORK

70. In this section I will briefly describe the framework proposed by FFNZ through its submission on Variation 1. The FFNZ framework seeks to improve water quality to give effect to both the Vision and Strategy and the NPS-FM but in a way that will be fairer and create less disruption to the economic and social wellbeing of individuals and communities in the Waikato and Waipa River catchments than the as-notified PC1 framework.
71. The FFNZ submission had appended to it a track change version of Chapter 3.11 incorporating the FFNZ framework. Given the hearing panel is thus already in receipt of the FFNZ framework I have not also appended the track changes framework to this evidence. I outline the high level premise of the framework as follows.

Most Practicable Action

72. A key theme underpinning the framework is reference to sub-catchment and farm characteristics to guide tailored actions (as opposed to blanket restrictions or reductions everywhere). Allied to this is the concept of Most Practicable Action ("MPA"). MPA is the combination of methods to manage the discharge of contaminants that recognises the characteristics of the sub-catchment, corresponds to the scale and significance of the contaminant relative to the water quality values, and takes into account proportionality and the resources reasonably available to the farming enterprise. This is defined in more detail in the section called "purpose of an FEP" that FFNZ has inserted into Schedule 1 and also in the definition inserted into the definitions section.
73. As discussed earlier, the policy and rule framework in Chapter 3.11 requires all contaminants to be reduced in all locations. The FEP assessment (as notified in Plan Change 1) involves minimising all contaminants and does not provide for a tailored or proportionate approach.
74. MPA provides for a tailored and proportionate approach and is similar to the well-established Best Practicable Option ("BPO") approach for point source discharges. I consider that the MPA approach is more likely to achieve sustainable management

with costs being reasonable and targeted at the water quality improvements needed to assist with achieving (while not overshooting) the 10 year targets¹⁶.

Three Levels of Interventions

75. The FFNZ framework is based on three levels of interventions:

- (i) **Group action plans** to improve water quality – primarily through sub-catchment planning as provided for in the amended Method 3.11.4.5, through Catchment Profiles coordinating sub-catchment information including any plans (Method 3.11.4.5A) and through FEPs taking into account the Catchment Profiles (amended Schedule 1). These plans will serve to coordinate whole or part of sub-catchment(s) actions or edge of field mitigations as well as to coordinate funding and participation¹⁷.
- (ii) **Minimum standards across all farming activities** based on industry agreed good management practices (“**GMP**”). The minimum standards should be consistent across the entire catchment and affordable, sensible and achievable. This is achieved through amendments to Schedule C. As is explained later in this submission, a FEP may identify more stringent or alternative actions than the minimum standards depending on the outcome of the assessment of critical source areas and the Most Practicable Action (“**MPA**”) identified.
- (iii) **Tailored actions** delivered through individual Farm Environment Plans with reductions on individual properties proportionate to the distance the sub-catchment is from the particular target and the individual property’s (or the sector’s) contribution towards that contaminant.

Thresholds for Assessment

76. The FFNZ framework has five main assessment thresholds, underpinned by the requirement for a Nitrogen Reference Point (“**NRP**”). I support the use of the **NRP** as a reference mechanism to inform the transitional rule structure, rather than as a basis for allocation of any of the contaminants, particularly **N**, that might be proposed in the future. The assessment thresholds are as follows:

- a. Those below permitted baseline (this is currently expressed as 15kgN/ha in Rule 3.11.5.2 but could alternatively be based on a narrative) can increase to the permitted baseline as a permitted activity. They are required to undertake a Simplified FEP to ensure that they are adopting mitigations based on **MPA** to address any risks from critical source areas. The intention is to provide some flexibility for low nitrogen emitters to increase nitrogen e.g. extensive hill country farmers on 8kgN/ha could change their sheep:cattle ratio and increase to 12kgN/ha.

¹⁶ A further discussion of the costs associated with the as-notified PC1 framework is provided at paragraphs xx of this evidence

¹⁷ There is no legal obligation to be part of an action plan but actions committed to by farmers as part of an action plan are taken into account when considering the tailored actions as part of the FEP.

- b. Those between permitted baseline and 75th percentile can increase nitrogen as a controlled activity (new Rule 3.11.5.4A). Council has control over the level of nitrogen increase. The intention is to provide some flexibility for farmers e.g. FFNZ is aware of several instances where farmers would like to fence off, retire and plant gullies and other parts of their land but they would need to intensify on the flat parts of their land in order to fund such works. Under the current planning framework, they would need to apply for consent under Rule 3.11.5.6 and in my view it is extremely unlikely that they would be granted consent. In contrast, the controlled activity would provide an appropriate consenting pathway for such proposals.
- c. Those above 75th percentile are required to reduce to the 75th percentile. However, an appropriate consenting pathway is provided in Rule 3.11.5.6 for those properties that are not able to reduce e.g. they may be operating in accordance with good management practices but due to geophysical characteristics they have very high nitrogen leaching.
- d. Commercial vegetable growing can continue as a controlled activity and can transfer to other sites (to recognise the rotational nature of this activity) as a controlled activity. Once the commercial vegetable growing activity leaves the parent property, the parent property can apply for consent as a restricted discretionary activity under Rule 3.11.5.6 if the previous activity is not being replaced by another commercial vegetable growing activity.
- e. Land use change is provided for as a discretionary activity with appropriate policy support and guidance to ensure an effects based decision.

Need for flexibility

- 77. Farming of any type is a dynamic business where the ability to respond to weather events, health and safety matters, changes to leasing arrangements and multiple other matters means that actions that may have been practicable and achievable when a plan is prepared may no longer be so within a short space of time. As a result, flexibility is essential to provide for economic and social wellbeing.
- 78. I am concerned that as drafted, there is insufficient flexibility in the rule and FEP framework and that this is one of the drivers of the significant economic and social costs associated with PC1. The framework I have described above provides flexibility in the rule framework in terms of the five primary thresholds or trigger points for assessing farming activities.
- 79. In terms of FEPs the framework put forward by FFNZ provides flexibility as follows:
 - a. FEPs are prepared by a certified farm environment planner and submitted to WRC. Where they have been prepared in accordance with Schedule 1, WRC does not have control over the content of the FEP.

- b. FEP actions and timing are not conditions of consent.¹⁸ This means there is some flexibility to change actions in response to unforeseeable or unexpected events or other changes.
- c. FEPs can be amended by a certified farm environment planner without the need to vary a resource consent.
- d. Minimum standards can be varied by a FEP, providing flexibility for things like how to achieve stock exclusion.
- e. The farming activity is to be undertaken generally in accordance with the FEP. FFNZ considers that this recognises the practice in the context of other activities that have to obtain management plans and undertake those generally in accordance e.g. traffic management plans, landscape management plans etc. FFNZ considers that this is necessary to provide for flexibility for things like storm events, animal welfare issues etc.

This flexibility is recognised through the adoption of new policies (e.g. 2A and 2B), amendments to the matters of control in the relevant rules and amendments to Schedule 1.

- 80. I note that the FEP framework put forward as set out above is based on the as-notified version of PC1. The 42A report¹⁹ addresses the concept of Good Farming Practice (GFP) as it may be recommended to be introduced into the Plan Change for use in a revised Farm Environment Plan (FEP) rule system. Discussions have been held with the WRC Implementation team who are promoting the GFP based FEP system.
- 81. While matters relating to FEPs will be heard in a subsequent hearing block at which I will present further more detailed evidence, I note now the following higher level planning matters relating to the introduction of a GFP based FEP system that I believe will be important for the hearing panel to consider in more detail at the appropriate time:
 - i. The FEPs are a fundamental pillar of the as-notified PC1 rule framework that (in theory at least) gives effect to the objectives and policies. Can the FEP rule set up be changed so fundamentally without creating a consequential inconsistency with the intent of the objectives and policies? It is not appropriate in planning terms for the rules (ie the methods) to drive the content of the objectives and policies – the converse is supposed to be the case. However, this is perhaps a further example of the disconnect between the rules and the objectives and policies in the as notified PC1 as I have referenced earlier.
 - ii. Compliance with the NRP for each farming operation is proposed to form a component of the overall audit grade, rather than being a direct compliance matter in its own right. The activity status for farming activity in the as-notified rule set up partly depends on compliance with the 75% percentile of the NRP for the property. Accordingly the hearing panel will in my view need to consider

¹⁸ It was unclear to me from the as-notified version of PC1 whether a change to a FEP would necessitate a change to condition application under s127 of the RMA.

¹⁹ Para 134

whether NRP compliance is being treated appropriately as part of a GFP based FEP system.

- iii. The proposal is to establish performance grades (A, B, C, D) to be given to a farming operation by a certified auditor. It will be important for the integrity and the efficient operation of the audit system (for both the landowner and the regulator) that the parameters for each grade are well defined and not left open to inappropriate levels of subjectivity.

RESPONSE TO 42A REPORT RECOMMENDATIONS

82. At the outset, I note the difficulty that I and other expert planners have experienced in addressing the content of the 42A report given the limited scope of the Block 1 hearing topics. The inability to consider the recommendations on the Objectives in conjunction with recommendations on associated policies, rules and other methods means that there is only so far that a planning analysis can go at this point. As a result I would caution the Hearing Panel against making any substantive decisions on the PC1 Objectives in particular until much later in the process.
83. In light of the above, I reserve my position on the recommendations made in the 42A report (as far as it goes) as they affect the relevant relief sought in the Federated Farmers submission. At this point, to be of some value to the Hearing Commissioners, I make more specific comment as follows on selected provisions:

Deletion of Headings and Explanations

84. I do not agree with the recommendations to delete the headings and explanations for the Objectives. The headings and explanations provide important context for plan users and for those charged with making decisions based in part on the guidance offered by the plan provisions. The recommended deletions will also result in the Objectives being inserted into the WRP by PC1 being inconsistent with the format of the Objectives in the remainder of the WRP. While the WRP review process is underway in its formative stages, the operative provisions will have relevance for potentially another five years at least.
85. I am also concerned that the wording of the objectives themselves, which would have to be read in isolation if the proposed deletions are effected, is more akin to policies or in some cases methods than higher order objectives which guide lower order policy and methods.

Objective 1

86. The fundamental concerns with the “overall reductions” approach underpinning PC1, and the setting of 80 year numeric targets, that I have outlined earlier in this evidence inform my concerns with Objective 1 and amendments sought to it as set out in the FFNZ submission which have the effect of removing the numerical targets and using a more narrative based approach that references the Vision and Strategy and the Values set out PC1.

87. In the 42a report²⁰, “the Officers do not recommend that the objective is amended to remove reference to numerical limits and targets. The inclusion of numerical limits and targets sends a clear signal of the likely changes that would be required to restore water quality, the deletion of these would remove an integral part of PC1 and could constitute a weakening of the direction set by PC1.”
88. I disagree with that recommendation for the reasons set out in paragraphs 55 to 65 in this evidence.

Objective 2

89. The 42A report recommends that Objective 2 be amended to read as follows:

~~**Social, economic and cultural wellbeing is maintained in the long term/Te Whāinga 2: Ka whakaūngia te oranga ā-pāpori, ā-ōhanga, ā-ahurea hoki i ngā tauroa**~~

Waikato and Waipā communities and their economy benefit from the restoration and protection of water quality in the Waikato and Waipā River catchments, which enables the people and communities to continue to provide for their social, economic and cultural wellbeing.

Reasons for adopting Objective 2

~~**Objective 2 sets the long term outcome for people and communities, recognising that restoration and protection of water quality will continue to support communities and the economy. The full achievement of the Table 11-1 2096 water quality attribute targets may require a potentially significant departure from how businesses and communities currently function, and it is important to minimise social disruption during this transition.**~~

90. Both the as-notified version of Objective 2 and the recommended amendments to it contain an assumption that restoring and protecting the water quality in the Waikato and Waipa River catchments will continue to enable people and communities to provide for their social, economic and cultural wellbeing.
91. I agree that when the Vision and Strategy is considered this assumption holds true with regards to cultural wellbeing. However, there is no reporting or evidence that I am aware of that indicates any degree of positive effect to any level of the economy (and thus the economic wellbeing of people and communities) from the introduction of PC1 in its current form.
92. In fact, as set out earlier in this evidence the economic assessment²¹ of PC1 concludes that it will produce varying degrees of adverse effect to the regional and national economy, with the short term (ie within 10 years) adverse effect being significant²². Likewise, to the extent that social wellbeing can be directly tied to

²⁰ Para 344

²¹ WRC, Regional and National-level economic impacts of the proposed Waikato Regional Plan Change 1, 30 August 2016

²² significant economic cost in the vicinity of a loss of \$193m and 1,880 jobs nationally in the first 10 years

economics, there is no evidence that the social wellbeing of people and communities will continue to be enabled.

93. On that basis, my view is that Objective 2 cannot be made operative in the form recommended as it would not give effect to the purpose of the RMA. The amendments sought to Objective 2 through the FFNZ submission²³, as follows, should in my view be preferred as they reflect the purpose of the RMA:

Objective 2: Social, economic and cultural wellbeing is ~~maintained~~ **provided for in the long term**/Te Whāinga 2: Ka whakaūngia te oranga ā-pāpori, ā-ōhanga, ā-ahurea hoki i ngā tauroa

Water quality in the Waikato River Catchment is ~~Waikato and Waipa communities and their economy benefit from the~~ **maintained, restored and/or protected** ~~restoration and protection of water quality in the Waikato River catchment, which~~ **whilst enabling** ~~enables the~~ people and communities to continue to provide for their social, economic and cultural wellbeing.

CONCLUSION

94. PC1 seeks to give effect to certain components of the Vision and Strategy, which while having the effect of a NPS, was inserted into the RPS/RMA policy environment at the “top of the tree” without the checks and balances of proceeding through the RMA 1st schedule process.
95. There is significant uncertainty, assumption and interpretation associated with the subject matter of PC 1, and the information used to support it. The Waikato Regional Council has elected to act in the face of this uncertainty without in my view properly assessing the risks of doing so or not as required by section 32 of the RMA.
96. The communities and individual land users within the Waikato and Waipa River catchments are now faced with PC1 as an explicitly transitional plan change that will in the short-medium term create a significant adverse effect on the regional economy, requiring (with particular focus on N) reductions in all four contaminants throughout the Waikato and Waipa River catchments (when in a number of places N in the river is squarely within the A band of the NPSFM), that will create a major regulatory process that if not carefully designed and operated will be costly and inefficient for both the regulator and the applicant, to achieve 10% of numeric targets developed on the basis of interpretation and high levels of uncertainty of information, aimed at achieving either one or a small number of objectives of the Vision and Strategy.
97. This is a situation that should be remedied through amendment to the as-notified PC1 provisions in the manner sought by FFNZ. Those amendments or others to the same effect will in my view give effect to both the Vision and Strategy and the NPS-FM by improving water quality in the Waikato and Waipa Rivers, but in a fairer way and with less disruption to the economic and social wellbeing of individuals and communities in the Waikato and Waipa River catchments. As a result, the sustainable management purpose of the RMA will be achieved.

²³ I note that the te reo text will need to be consequentially updated to accurately reflect the final English language text version of this and all the objectives.

