

**IN THE ENVIRONMENT COURT
AT AUCKLAND**

**I TE KŌTI TAIAO O AOTEAROA
KI TĀMAKI MAKĀURAU**

Decision [2026] NZEnvC 130

IN THE MATTER OF

appeals under Clause 14 of Schedule 1
of the Resource Management Act 1991
against the decision of the Waikato
Regional Council on Proposed Plan
Change 1 to the Waikato Regional Plan

BETWEEN

OJI FIBRE SOLUTIONS (NZ)
LIMITED

(ENV-2020-AKL-000083)

FONTERRA CO-OPERATIVE
GROUP LIMITED

(ENV-2020-AKL-000084)

WAIPĀ DISTRICT COUNCIL

(ENV-2020-AKL-000085)

TAUPO DISTRICT COUNCIL

(ENV-2020-AKL-000086)

HORTICULTURE NEW
ZEALAND

(ENV-2020-AKL-000087)

IWI OF HAURAKI

(ENV-2020-AKL-000088)

WAIKATO RIVER AUTHORITY

(ENV-2020-AKL-000090)

HAMILTON CITY COUNCIL

(ENV-2020-AKL-000091)

SOUTH WAIKATO DISTRICT
COUNCIL

(ENV-2020-AKL-000092)

ROYAL FOREST AND BIRD
PROTECTION SOCIETY OF NEW
ZEALAND INCORPORATED

(ENV-2020-AKL-000094)



DIRECTOR-GENERAL OF
CONSERVATION

(ENV-2020-AKL-000096)

DAIRY NZ LIMITED

(ENV-2020-AKL-000097)

WAIRAKEI PASTORAL LIMITED

(ENV-2020-AKL-000098)

BEEF + LAMB NEW ZEALAND
LIMITED

(ENV-2020-AKL-000099)

WAIKATO AND WAIPĀ RIVER
IWI

(ENV-2020-AKL-000100)

AUCKLAND/WAIKATO AND
EASTERN FISH AND GAME
COUNCILS

(ENV-2020-AKL-000101)

FEDERATED FARMERS OF NEW
ZEALAND

(ENV-2020-AKL-000102)

CNI IWI LAND MANAGEMENT
LIMITED

(ENV-2020-AKL-000103)

LANDCORP FARMING LIMITED

(ENV-2020-AKL-000147)

PUKEKOHE VEGETABLE
GROWERS ASSOCIATION

(ENV-2020-AKL-000148)

LOCHIEL FARMLANDS LIMITED

(ENV-2020-AKL-000149)

Appellants

AND

WAIKATO REGIONAL COUNCIL

Respondent

Court: Chief Environment Court Judge David Kirkpatrick
 Alternate Environment Judge Te Kani Williams
 Environment Commissioner Mark Mabin
 Mr Jim Hodges (Special Advisor)

Last case event: 17 April 2026¹

Appearances:² M Conway, T Fischer, and L Chai for Waikato Regional Council
 V Tumai and M Hooper for the Director-General of
 Conservation
 S Ongley for Auckland/Waikato and Eastern Fish and Game
 Councils
 P Anderson for the Royal Forest and Bird Protection Society of
 New Zealand Incorporated
 D Minhinnick and A Gilbert for Fonterra Co-operative Group
 Limited
 B Matheson and N Edwards for Federated Farmers of New
 Zealand
 C Thomsen and C Luisetti for Beef + Lamb New Zealand Ltd
 P Majurey for Iwi of Hauraki
 J Ferguson for CNI Iwi Land Management Limited and Waikato
 and Waipā River Iwi
 G Chappell for OJI Fibre Solutions (NZ) Limited
 T Mijatov, L Ford, and N Buxeda for Horticulture New Zealand
 and Pukekohe Vegetable Growers Association
 J Forrett and C Muggeridge for Lochiel Farmlands Limited
 B Carruthers for Wairakei Pastoral Limited
 G Pinnell for himself
 T Ryan and C Bulow for Waikato River Authority
 A Green and T Cassidy for Ōtorohanga District Council and
 Matamata Piako District Council
 C Malone for Waipā District Council
 N Garvan and R Te Rito for Genesis Energy Limited
 L Muldowney and S Thomas for Hamilton City Council, Taupō
 District Council and South Waikato District Council, Waikato
 District Council

Date of Decision: 8 June 2026

Date of Issue: 8 June 2026

¹ Joint memorandum of counsel for Beef and Lamb and Federated Farmers (**the JFP**) and Wairakei Pastoral Limited (**WPL**).

² As for the main hearings.

FINAL DECISION OF THE ENVIRONMENT COURT

- A: The amended provisions in PC1 Final satisfy the directions in the First Interim Decision and subsequent Court directions except for the following:
- (a) To satisfy Direction 1, Method 3.11.3.6 (b) must be amended as directed in our minute dated 27 August 2025 to indicate currently anticipated future attribute [states] and load reductions required in individual sub-catchments. It should be clear in the plan that it is provided for information and possible longer-term planning purposes only and will not be considered when consent applications required by PC1 are lodged.
 - (b) The definition of “farm” has been introduced in response to Directions 3 and 25 and while “farming” is defined and includes commercial vegetable production, “farm” is not. To ensure consistency and clarity, a definition of “farm” that includes commercial vegetable production is to be added to the Glossary.
 - (c) To satisfy Direction 12: Policy 3A(a)(vi) is to be amended by replacing “affordable” with “reasonable”, as discussed and directed under Direction 12 to read:

~~are the actions and mitigations affordable, and are the costs and efforts of the actions and mitigation affordable~~ reasonable and proportionate to the expected benefits in terms of reductions in risk of contaminant discharges?
 - (d) The reference to nitrogen risk scorecard in the proposed amendment to Schedule B(2)(4)(b) must be qualified so that its use for anything other than for dairy farms with a low risk of diffuse discharges must have been approved for the intended use in PC1 by the Chief

Executive in accordance with Schedule B(C), amended as required by this decision.

- (e) For the avoidance of doubt, it is important to be clear that use of the NRS now proposed in PC1 for both drystock and CVP is not as an alternative to Overseer in a regulatory role to determine consent activity status, but as a tool to assist in understanding, assessing and managing the risk of diffuse discharges from farming activities, except dairy farming with more than a low risk of diffuse discharges.³
- (f) To satisfy Direction 13, and be consistent with the requirements for CVP, it must be clear that the risk analysis for drystock farming must include a description of the good management practices to be adopted and prioritised, reporting on key risk factors, using a drystock risk scorecard approved by WRC's Chief Executive in accordance with this decision (or Overseer or another approved alternative method), and references to actions in the Farm Environment Plan that will reduce the identified risks.
- (g) The additional requirements for approving future use of nitrogen risk scorecards set out under Direction 13, other than for dairy farms with a low risk of diffuse discharges requirements, must be incorporated into Schedule B(C).
- (h) The use of the purchased nitrogen surplus is not approved as a decision support tool in Schedule B(2)(4)(c) and reference to it must be removed. If WRC decides to revisit that in the future, it will need to satisfy Schedule B(C), amended as required by this decision.

³ Overseer must be used for dairy farming with more than a low risk of diffuse discharges in accordance with our previous directions.

- (i) For reasons discussed under Direction 13, WRC is to reconsider the requirement for dairy farmers to engage both a CFEP and a Certified Farm Nutrient Advisor.
- (j) The following advice note is to be added in an appropriate location in the plan relating to drystock activities and after Policy 3(b), as discussed under Direction 18:

Decision support tools approved through the resource consent application process in accordance with B(B2) must be the most appropriate for the application and may include some or all of Overseer, a commercial vegetable production or drystock nitrogen risk scorecard approved for use in Chapter 3.11 by Waikato Regional Council's Chief Executive or other alternative approved by the Chief Executive in accordance with Schedule B(C).

- (k) For the reasons set out under Direction 18, the words “owned by the applicant” in Rule 3.11.4.5(2) are to be removed unless WRC can demonstrate there is a specific need for their inclusion.
- (l) For the reasons set out under Directions 20 and 21, Schedules D1 and D2 relating to the mapping of streams are to be amended generally in accordance with Federated Farmers' appeal.
- (m) Part C of Schedule D3 is to be amended to include a provision for the review of FEP audit frequency as directed under Direction 22.
- (n) While we stressed the need for clarity in what FEPs must provide and that the importance of good guidelines cannot be overstated, that is now a matter for WRC, as discussed under Direction 22.
- (o) As discussed under Direction 22, we accept new clause Part C(3)(e) in Schedule D1 (and equivalent in Schedule D2) relating to cultural matters of importance to tāngata whenua. However, prior to finalisation of PC1, WRC is to clarify how relevant information will be applied practically, when that information is received. Also, how that information will be taken into account in FEPS and what farm

actions may be necessary to address cultural matters. Detailed information will need to be set out subsequently in guidelines.

(p) In relation to Direction 24: Intensive winter grazing, the definition of “forage” has been deleted, so its use in Schedule C needs to be replaced by “sacrifice paddocks and intensive winter grazing” to be consistent with Schedule D1 and the Court’s directions.

(q) As directed under Direction 27, Advice Note 1 in Schedule B(2) is to be amended to read:

Except in exceptional circumstances, the choice of tool to use is at the discretion of the farmer, provided it has been approved for use in Chapter 3.11 in accordance with Schedule B(C).

(r) In response to Direction 33, Schedule D3, Part C(3)(c) relating to auditor’s reports is to include an additional requirement for the farm operator to provide the auditor with:⁴

any evidence of circumstances beyond the control of the farmer that have prevented the full compliance with the action plan and/or any evidence of reasonable attempts to comply, and

(s) In accordance with Direction 34, Policy 7 (b) is to be amended to read:

farming in all other sub-catchments may be granted consent for a duration of up to 15 years and ending no later than 31 December 2041;

(t) The wording in Policy 1 and Schedule B is to be reviewed and, if necessary, amended to address the matters raised under Direction 35.

B: Amended provisions are to be submitted to the Court within 30 working days of the date of this decision.

⁴ Memorandum of counsel for WRC dated 25 November 2025 at [78](d).

C: There is no requirement for a s 293 RMA process.

D: Costs are reserved.

Contents

Abbreviations.....	11
PART A Background and introduction.....	13
A1 Introduction.....	13
A2 Overview of the process leading to the issue of the First Interim Decision	14
A3 Overview of the Court process since the issue of the First Interim Decision	16
A4 Preliminary responses to the First Interim Decision.....	20
A5 Substantive responses to the First Interim Decision.....	21
A6 The September Judicial Telephone Conference and resulting directions	21
A7 WRC’s proposed amendments and parties’ responses.....	24
A8 Appeal by Wairakei Pastoral Limited.....	25
A9 Retirement of Commissioner Hodges	25
PART B Responses to directions in the Interim Decisions and our findings	26
Direction 1: Provision of best available information by WRC.....	26
Direction 2: Matters relating to ss 70 and 107	29
Directions 3 and 25: Single operating units.....	45
Direction 4: Definitions of intermittent and ephemeral waterbodies	52
Direction 5: Overseer reference files.....	53
Direction 6: Nitrogen Risk Score values for permitted activity limits.....	55
Direction 7: Amend matter of control (iv) in Controlled Activity Rule 3.11.4.4.....	56
Direction 8: Amendment to Policy 1(e).....	57
Directions 9 and 10: Revised version of Policy 2B) and definitions of good management practices	58
Direction 11: Possible non-regulatory role for Nitrogen Risk Scorecards	74
Direction 12: Amendments to Permitted Activity Rule 3.11.4.3.....	75
Direction 13: Demonstrating a reduction in contaminant losses from permitted drystock farms	81
Direction 14: Farm scale erosion risks	101
Direction 15: Amendments to Part B(b) of Schedule D1	102
Direction 16: Amendments to Part D2a of Schedule D1	103
Direction 17: Recommend if a definition of crop rotation should be included in PC1 103	
Direction 18: Nitrogen losses from CVP activities	106
Direction 19: Ensuring clarity of Schedule C.....	115

Directions 20 and 21: (relating to slope) Stock exclusion regulations.....	116
Direction 21: Relating to wetlands and Schedule C	140
Direction 22: Farm Environment Plans.....	141
Direction 23: Critical source areas (CSAs).....	155
Direction 24: Intensive winter grazing.....	158
Direction 25: Definitions of “property”, “enterprise” and “single operating unit”. ..	167
Direction 26: Rule 3.11.4.9.....	168
Direction 27: Alternative models to Overseer	168
Directions 28 and 29: Policies relating to offsetting and compensation	178
Direction 30: Point Source Discharges	183
Direction 31: Minor Amendment to the wording of Policy 12(c)	184
Direction 32: Tāngata Whenua Ancestral Land.....	185
Direction 33: Matters relating to objectives, policies and rules.....	196
Direction 34: Duration of consents	197
Direction 35: Terminology.....	200
PART C Section 32AA evaluation, scope, need for a s 293 process, the provision of guidelines and our overall evaluation	204
C1 Section 32AA evaluation	204
C2 Scope	208
C3 Need for a s 293 process	208
C4 Provision of guidelines.....	209
C5 Our overall evaluation.....	212
C6 Final directions.....	212
Attachment 1	213
Chronology.....	213
Attachment 2	215
Corrigendum to the first Interim Decision dated 28 May 2025.....	215

Abbreviations

CFEP	Certified Farm Environment Planner
CSA	Critical source area
FEP	Farm Environment Plan required under PC1
FFP	Farm Environment Plan that may be required under the Freshwater Farm Plan Regulations in the future
IWG	Intensive winter grazing
First Interim Decision	<i>Oji Fibre Solutions (NZ) Limited v Waikato Regional Council</i> 2025 NZEnvC 170
JFP	Joint Farming Parties – Beef +Lamb New Zealand (Beef and Lamb) and Federated Farmers of New Zealand
JTC	Judicial Telephone Conference
NES-F	Resource Management (National Environmental Standards for Freshwater) Regulations 2020
NLLR	Nitrogen Leaching Loss Rate
PC1 Final	WRC’s Final proposal dated 1 December 2025
Post-conference minute	Minutes dated 15 and 19 September issued following the September JTC relating to “General matters” and “Stock exclusion” respectively
Pre-conference minute	Minute dated 27 August setting out background and an agenda for the September JTC
Primary contaminants	Total Nitrogen, Total Phosphorus, sediment and <i>E. Coli</i> , as an indicator of microbial contaminants
RIS	Regulatory Impact Statement: Managing discharges under s70 of the Resource Management Act

Second Interim Decision	<i>Oji Fibre Solutions (NZ) Limited v Waikato Regional Council</i> 2026 NZEnvC 033 Relating to Section 70 of the RMA
Section 70(3) effects	the effects in s 70(1)(d), (f) and (g) of the RMA
Section 70(3) requirements	That the permitted activity standards, or those standards in combination with any other provisions in the plan, will contribute to a reduction of the effects in s 70(1)(d), (f) and (g) effects over a period of time not greater than 10 years
TWAL	Tāngata Whenua Ancestral Land
WPL	Wairakei Pastoral Limited
WRA	Waikato River Authority

PART A Background and introduction

A1 Introduction

[1] Plan Change 1 to the Waikato Regional Plan (**PC1**) is the first stage of an 80-year programme to restore and protect the Waikato and Waipā river catchments by 2096 and give effect to Te Ture Whaimana, which is the primary direction-setting document for the programme. Te Ture Whaimana's vision is:

- (1) Tooku awa koiora me oona pikonga he kura tangihia o te maataamuri.
The river of life, each curve more beautiful than the last
- (2) Our vision is for a future where a healthy Waikato River sustains abundant life and prosperous communities who, in turn, are all responsible for restoring and protecting the health and wellbeing of the Waikato River, and all it embraces, for generations to come.

[2] PC1 must ensure that within its 10-year term, reasonable progress is made towards achieving Te Ture Whaimana, while taking into account the significant social and economic consequences that will arise, including by recognising that it will take time to adapt to the new regulations.

[3] The Court issued its substantive Decision on 28 May 2025 (**First Interim Decision**).⁵ A summary of key findings is included at the start of that decision, which included 35 directions that required responses from WRC. Before responding to the directions, WRC consulted with other parties as directed and summarised the feedback received. Some parties provided further feedback direct to the Court.

[4] The Court issued a second Interim Decision relating to s 70 of the RMA on 2 March 2026 (**Second Interim Decision**),⁶ which included an invitation to parties to identify any further evidence they considered needed to be provided in relation to our s70 evaluation. We also invited them to identify any matters of fact, expert opinion or law of direct relevance that they considered had been omitted or not been interpreted or referenced appropriately.

⁵ *Oji Fibre Solutions (NZ) Limited v Waikato Regional Council* 2025 NZEnvC 170.

⁶ *Oji Fibre Solutions (NZ) Limited v Waikato Regional Council* 2026 NZEnvC 033.

[5] Several “Final” versions of PC1 were submitted by WRC over time after the First Interim Decision was issued and to distinguish the latest version submitted on 1 December 2025, we refer to it as **PC1 Final**. For clarity, we note that all dates in the remainder of this Final Decision are for the 2025 calendar year unless stated otherwise.

[6] This Final Decision takes into account responses from parties to the first two Interim Decisions and is subject only to submission of changes to PC1 Final to address our findings below.

A2 Overview of the process leading to the issue of the First Interim Decision

[7] Development of PC1 started in 2012, and was first notified on 10 April 2016, approximately ten years ago, at a time when the statutory and regulatory frameworks were largely settled. Changes to ss 107 and 70 of the RMA came into effect on 23 October 2024 and 21 August 2025 respectively, with significant implications for PC1. In all, some 10 changes to the RMA and regulations occurred after the Decisions Version of the plan was notified, all of which required changes to the PC1 provisions.

[8] In addition, the suitability of Overseer for use in regional plans under the RMA became the subject of intense national scrutiny from about the time of the Council hearing and remained a significant matter of dispute from the start of and throughout the appeals process. Many changes to the Decisions Version were proposed through the appeals process but a wide range of matters remained in dispute through much of the process leading to and following the issue of the First Interim Decision.

[9] As part of our overall evaluation in the First Interim Decision, we stated that the above factors resulted in a lack of coherence and some internal inconsistencies

in the provisions.⁷ When providing guidance to parties on what was needed to finalise PC1, we also stated that:

[1161] ... there was insufficient consideration of scope and a lack of documented evidence and appropriately robust s 32AA evaluations to support some of the proposed changes, a number of which could have significant consequences. Imprecise language is used in places, which could be interpreted differently by different parties involved in the regulatory process, with a corresponding potential for disputes.

[1162] Our interim decision identifies matters where further work is required but it is not the role of the Court to descend into the planning arena and attempt to take over the role of WRC. We have identified possible ways of addressing our concerns, based on the evidence, but it is for WRC to propose amendments for consideration by the Court following consultation with parties.

...

[1164] There is an understandable desire by some parties to do more sooner and we have considered carefully what can realistically be achieved in all the circumstances that exist in the PC1 area, including the uncertain regulatory environment that is likely to continue for some time. A large momentum shift will be required from the “business-as-usual” practices that have been enabled for much of the last 20 years and we have sought to avoid setting unrealistic timeframes for that to occur.

[1165] Setting unrealistically short timeframes will almost certainly mean they will not be met to varying degrees, resulting in increased stress for land users, extra work for WRC and increased tension and negative feelings towards PC1. It is important that such a situation is avoided as far as possible. Further, setting realistic timeframes would generally not delay progress by more than two or three years initially, if that, out of the 70 years remaining to achieve Te Ture Whaimana and this could readily be caught up in the remaining 60 years.

...

[1167] However, the need for WRC to exercise its discretion cannot be avoided because the information currently available is insufficient to provide the certainty of outcomes with the wide array of issues that will have to be considered when certifying FEPs and issuing resource consents.

[10] We emphasised the importance of ensuring that the provisions are “as clear on their face, certain, workable, practicable, enforceable and as equitable as possible” through the First Interim Decision.

⁷ First Interim Decision, from [1156].

A3 Overview of the Court process since the issue of the First Interim Decision

Preamble

[11] Responses to the First Interim Decision took more than seven months to address, through to December 2025, and involved an iterative and complex series of interchanges between WRC and other parties, between WRC and the Court, between other parties and the Court and between all parties and the Court at a Judicial Telephone Conference (**JTC**) in September 2025. As part of its response, WRC commissioned an independent review of PC1 in accordance with Direction 35. The review focused on standardising inconsistent terminology, improving readability, and ensuring integration with the operative Waikato Regional Plan but did not change the intent or outcomes of the provisions of PC1. PC1 Final includes the review findings.

[12] WRC stated that in accordance with the direction of the Court at paragraph [131] of the Stock Exclusion Minute, it attempted to develop final proposals in a workable and practicable manner. It considered that the development of PC1 throughout the appeals process has led to the provisions becoming more workable for those affected – particularly farmers.⁸

Structure of this decision

[13] We first address preliminary responses to the First Interim Decision. For some directions, the number, variety and depth of submissions received was substantial, but we acknowledge and appreciate the considerable effort that parties put into their responses. These directions were:

Direction 1: Provision of best available information by WRC

Direction 2: Matters relating to ss 70 and 107

⁸ Memorandum of counsel for WRC dated 25 November 2025, at [17] and [68].

- Directions 3 and 25: Single operating units
- Directions 9 and 10: Revised version of Policy 2B) and definitions of good management practices
- Direction 13: Demonstrating a reduction in contaminant losses from permitted drystock farms
- Direction 18: Nitrogen losses from CVP activities
- Directions 20 and 21: Stock exclusion regulations (relating to slope)
- Direction 22: Farm Environment Plans
- Direction 24: Intensive winter grazing
- Direction 27: Alternative models to Overseer
- Directions 28 and 29: Offsetting and compensation
- Direction 32: Tāngata Whenua Ancestral Land

[14] We considered most of these directions under the following sub-headings:

- (a) The issue
- (b) Substantive responses to the First Interim Decision
- (c) The September Judicial Telephone Conference and resulting directions
- (d) WRC's further proposals and parties' responses
- (e) Our evaluation and/or findings
- (f) Scope

[15] A chronology of the overall process is included in Attachment 1 by reference to key minutes and memoranda in response. We note this is not a fully inclusive list. The extent and scale of matters remaining in dispute following the issue of the First Interim Decision is reflected in the more than 80 memoranda from parties relating to matters in dispute subsequently requiring consideration by the Court, which presented a substantial review and evaluation challenge. Approximately half of the memoranda were addressed directly to the Court and others were addressed to WRC in response to its proposals to address the Court's directions.

[16] Following the train of communications by reference to the different memoranda is not straightforward. While the sources of information we relied on are extensively footnoted through this decision to assist parties in understanding our reasoning, the memoranda referred to are not always easy to find. To further assist parties, we provide the following directory of where to find more substantive responses to Court directions:

- (a) WRC's memorandum dated 4 August 2025 set out its final response to the First Interim Decision and included a consultation document provided to the parties on 11 July. Fifteen responses were received from other parties, 14 of which were dated 25 July and included in a common folder titled "Responses to WRC Consultation Document" separate from WRC's memorandum.
- (b) The other memorandum dated 3 August from the Waikato and Waipā River Iwi and CNI Iwi Land Management Limited (**CNI**) is included with WRC's memorandum dated 8 August.
- (c) In addition, the Court received 14 memoranda dated between 15 and 18 August direct from parties.
- (d) For completeness, we record that a record of the Judicial Telephone Conference held on 3 September summarises views expressed by parties relating to different directions.

- (e) WRC’s memoranda dated 31 October and 17 November responded to the Court’s post conference minute dated 15 September relating to “general matters”. WRC included two consultation documents dated 17 and 20 October in its 31 October memorandum. Seven responses dated 24 October received from parties and were included in Appendix C of that memorandum.
- (f) WRC’s memorandum dated 17 November referred to the above consultation documents and included emailed comments in response dated 29 or 30 October from six parties in Annexures A and B.
- (g) WRC’s memorandum dated 25 November responded to the Court’s post conference minute dated 19 September relating to stock exclusion. It included a consultation document circulated on 13 November for comment by parties. Seven responses dated 19 November were received and included in Appendix C of the memorandum.
- (h) For completeness, we record that the Court received other memoranda from parties relating to different matters concerning them at different times.

[17] We note that we have not attempted to address every dispute between WRC and the parties and relied on WRC’s duty as an experienced regulator having addressed others to the extent it considered appropriate.

[18] We set out preliminary comments in the remainder of Part A and address them in more detail in our evaluations of individual directions in Part B, to the extent relevant.

[19] Amendments and additions to wording proposed are underlined and deletions are shown by strike through.

A4 Preliminary responses to the First Interim Decision

[20] In the First Interim Decision, we invited submissions from parties as to whether they considered there were any matters of fact, expert opinion or law of direct relevance to the issues that had been omitted or not been referenced appropriately. We also invited parties to consider whether there were any matters remaining in dispute that were not addressed by the First Interim Decision and advise the Court by 27 June.

[21] Initial responses from parties were thoughtful and helpful, with some having no issues to raise, some pointing out matters of detail they considered were not correct and others identifying a small number of corrections that needed to be made to the First Interim Decision. We prepared a draft corrigendum setting out our proposed corrections and provided a copy for the information of parties.⁹ We made corrections in the draft corrigendum to addresses matters raised by WRC¹⁰ and the revised version is included as Attachment B.

[22] No party identified any matters remaining in dispute that had not been identified in the First Interim Decision.

[23] We issued a minute dated 8 July 2025 to clarify and respond to a wide range of issues raised in the parties' initial responses. Stock exclusion was addressed in some detail in the minute because of continuing high levels of concern about workability. We also set out our anticipated process to finalise our determination of the appeals and to seek input on that process from parties, which was largely supportive.

[24] We noted that timing was likely to be affected by the timing of any changes to s 70 and any further changes to s 107 made by the Government's legislative process. We also recorded that:

[3] When considering the future process, the Court is aware that the Government has indicated an intention to further amend legislation relevant

⁹ Attached to Court's Minute dated 8 July 2025, as Appendix A.

¹⁰ Memorandum of counsel for WRC dated 27 June 2025 at [32].

to some of the issues being addressed in PC1, including those relating to commercial vegetable production (CVP). Parties may wish to update the Court on any relevant information they may be aware of but until the final form of any amendments is known, our decision must be based on the law as it currently stands and the evidence presented to us.

A5 Substantive responses to the First Interim Decision

[25] On 11 July, WRC provided other parties with a consultation document setting out its proposed responses to the First Interim Decision and invited comments from them. It provided its final proposals responding to the 35 directions in the First Interim Decision to the Court on 4 August, after considering the responses it received from parties.¹¹ It included a “Final” Plan Change dated 4 August. A subsequent proposed Final Plan Change dated 8 August was submitted in response to comments subsequently received from the Waikato and Waipā River Iwi and CNI relating to Rule 3.11.4.10: Restricted Activity Rule – Development of Tāngata Whenua Ancestral Land.

[26] Comments on the final proposals from other parties direct to the Court were received by 15 August 2025, again in accordance with our directions.

[27] We record our appreciation to those involved for the thoroughness of their responses.

A6 The September Judicial Telephone Conference and resulting directions

[28] Following our initial evaluation of WRC’s proposals and subsequent memoranda from other parties, we identified a range of matters relating to particular directions in the First Interim Decision that would benefit from further input from

¹¹ Beef + Lamb New Zealand Limited and Federated Farmers of New Zealand (**Joint Farming Parties or JFP**); Wairakei Pastoral Limited (**WPL**); Lochiel Farmlands Limited (Lochiel); Graham Pinnell; Horticulture New Zealand (**HortNZ**); Auckland Waikato & Eastern Region Fish and Game Councils (**Fish and Game**); Waikato River Authority (**WRA**); Waikato and Waipā River Iwi and CNI Iwi Land Management Limited (**CNI**); Oji Fibre Solutions (NZ) Limited (**Oji**); Hamilton City Council and Taupo District Council; Waipā District Council; South Waikato District Council and Matamata-Piako District Council; and Bathurst Resources Limited and BT Mining Limited.

parties before we finalised our determination of the appeals. These were set out in our minute dated 27 August 2025 for discussion at the JTC on 3 September 2025. Parties were directed to advise the Court and other parties of any other topics they wished to have added to the agenda by 1 September. WRC submitted a list of suggested changes to PC1 in response to the minute for discussion at the JTC.

[29] Following the JTC, we issued a minute on 15 September, in which we recorded that there remained matters of significant concern to some parties relating to the workability and practicability of the provisions, noting that we had emphasised the need for the provisions to be workable and practicable throughout the appeals process. We then stated:

[3] It appears that still further work needs to be done and it is well beyond time when that should have been completed. Once the directions in this minute and a subsequent one relating to the stock exclusion regulations have been complied with, we will make our determinations based on what has been provided, with a minimum of further delay unless there is a compelling reason to do otherwise.

...

[5] ... As part of the dispute resolution process, it has been necessary for the Court to explore a multitude of ways of addressing the outstanding issues, some of which have been adopted, others not. In some cases, it was necessary for us to direct WRC to propose alternative provisions. At the end of the day, PC1 will be WRC's plan to implement and it is essential that WRC is satisfied that the provisions will enable it to do so.

[6] It is desirable that the parties work collaboratively to find solutions that they agree appropriately address the remaining concerns in accordance with the Act. At the JTC, we encouraged parties to make a start on that process, ahead of formal directions from the Court.

[30] We then addressed the further work required for each of the main directions remaining in dispute, except in relation to stock exclusion, noting "[t]he stock exclusion provisions remain highly contentious, and we will address them in a separate minute". In relation to ss 70 and 107 we noted:

[12] We understand that no party considers s 70 as amended under the Resource Management (Consenting and Other System Changes) Amendment Act (**Amendment Act**) prevents the inclusion of permitted activity rules in PC1.

...

[17] While matters relating to s 107 are a matter for WRC, not the Court, WRC has stated that there are already conspicuous changes in the colour or visual clarity of fresh water and that fresh water has been rendered unsuitable for consumption by farm animals. WRC has advised that it will assume s 107 will apply to all sub-catchments in the PC1 area and that it intends to address s 107 at the time of resource consent applications, which we would have expected.

...

[20] ... We require WRC to advise the Court of its interpretation of the law in relation to s 107 and PC1.

[31] We addressed matters remaining in dispute in relation to stock exclusion in a subsequent minute dated 19 September in considerable detail, reflecting their scale and significance and the large gap between parties. To put their scale into perspective, our preliminary observations included:

[9] PC1 is a complex plan change and ensuring it is workable is particularly challenging for WRC. The consequences of it being found to be unworkable mean that it would quickly lose credibility and the desired environment outcomes would not be achieved.

[10] A number of matters require review, particularly the basis on which the proposed stock exclusion provisions were considered to be the most appropriate way to meet the objectives. This was raised by a number of parties during the hearing and the Court stated in the Interim Decision that a number of proposed amendments were not supported by robust evidential justification and/or an appropriate evaluation in accordance with s 32. The stock exclusion provisions were one.

[11] We stated early in the hearing process that there is a need to be realistic when setting timeframes and “that's something we'll be looking at very carefully.” The cost of mitigation measures is clearly an important consideration in a s 32 evaluation but it was not addressed in any meaningful way in WRC's evidence. ...

[32] Under these circumstances, and to minimise further delays in the process, it was necessary for the Court to undertake its own preliminary s 32AA evaluation, which we set out in the minute, based on significant additional evidence obtained by way of Court directed expert conferencing. As a prudent check on that process, as part of our directions in the minute, we invited:

[138] ... submissions from parties on whether they consider there are any calculation errors or matters of fact, expert opinion or law of direct relevance to the issues that have been omitted or not been referenced appropriately in this minute and our minute dated 15 September 2025.

[33] In response to this invitation, parties sought a small number of clarifications but identified no calculation errors or matters of fact, expert opinion or law of direct relevance to the issues that had been omitted or not been referenced appropriately.

[34] We record that the issue of this Final Decision required us first to consider the PC1 provisions in terms of new s 70(3) of the RMA, issue the Second Interim Decision to set out our findings, and then to consider responses to that decision, which were received up until 17 April 2026.

A7 WRC's proposed amendments and parties' responses

[35] WRC proposed that the responses be progressed in two streams.¹² Its initial responses relating to general matters were included in a memorandum dated 31 October, which included a copy of its consultation document dated 17 October and copies of responses received from parties up to that date.¹³ It was not able to address some directions until all responses were received and its final responses were included in a memorandum dated 17 November, together with copies of feedback on its proposals.

[36] Responses relating to stock exclusion were received by members of the Court on 2 December 2025. They included memoranda dated 25 November from WRC and Mr Pinnell, together with three attachments dated 1 December 2025.¹⁴ A 32AA evaluation in support of significant changes to the PC1 provisions resulting from the minutes dated 15 and 19 September was submitted by memorandum dated 5 December. Further correspondence was received up until 15 December.

[37] We discuss responses to our directions in Part B of this decision to the extent relevant to our determinations.

¹² Memoranda dated 3, 13 and 31 October 2025.

¹³ From the Joint Farming Parties, WPL, Mr Pinnell, HortNZ, Fish and Game, the Director-General of Conservation and Dairy NZ Limited.

¹⁴ Appendix A: Response to November 2025 draft version of PC1; Appendix B: Response table – parties' feedback and WRC response on consolidated version of PC1 and Appendix C: Final consolidated PC1 version 1 Dec 2025 (**PC1 Final**).

A8 Appeal by Wairakei Pastoral Limited

[38] Before commenting on the responses, we note that one appeal to the High Court against the First Interim Decision was lodged by Wairakei Pastoral Limited and has yet to be heard. The appeal related to Rule 3.11.4.9, which restricts land use changes, and in particular challenges:

- (a) The *vires* of the Rule;
- (b) The retrospective application of the Rule to lawfully conducted activities;
- (c) The workability of the Rule given the Court's preference to manage farming activities by reference only to "single operating unit"; and
- (d) The Court's jurisdiction to amend the "end date" of the Rule from the notified version (1 July 2026) to 10 years after Plan Change 1 is made operative.

[39] This Rule will need to be finalised in light of the High Court decision.

A9 Retirement of Commissioner Hodges

[40] Environment Commissioner Hodges retired from the Court on 20 April 2026. As we advised parties in our minute dated 23 April 2026, we had reached the point where the substantive issues identified in the First and Second Interim Decisions had been decided on and no further deliberative decisions had yet to be made. This decision is based on the findings.

[41] As also noted, the Court was at the stage of checking the draft to ensure that cross-references and footnotes are accurate and that any typographic errors are identified and corrected. Mr Hodges remained involved assisting the Court in that editorial work as a Special Advisor under s 259 of the RMA.

PART B Responses to directions in the Interim Decisions and our findings

Direction 1: Provision of best available information by WRC¹⁵

[42] Direction 1 required WRC to:¹⁶

Advise how it intends to provide farming and CVP land users with the best available information on the indicative long-term reductions in loads of the four contaminants that could be required in each sub-catchment and other catchment context information prior to FEP preparation and/or consent applications being made.

The issue

[43] While PC1 is intended to achieve contaminant reductions to meet only the interim targets, it is appropriate that farmers and growers are provided with a general indication of longer-term reductions that will be required in their sub-catchment to achieve the outcomes sought by Te Ture Whaimana. This is likely to be relevant to future farm planning.

[44] The extent of contaminant reductions required varies significantly between sub-catchments, with limited if any improvements being required to achieve target attribute states in some and relatively large improvements being required in others. During the hearing, the Court explored how appropriate information on anticipated indicative longer-term load reductions might be made available to interested parties once PC1 became operative.

[45] This was first raised by the Court in September 2023 when questioning Dr Scarsbrook about the relationship between PC1 and future plan changes.¹⁷ We

¹⁵ Refer First Interim Decision, at Part A5, and WRC memorandum dated 4 August 2025, from [10].

¹⁶ First Interim Decision at [1184].

¹⁷ Transcript, at page 167.

returned to it at various other times through the hearing,¹⁸ as did counsel. In joint closing submissions, the Joint Farming Parties (**JFP**) submitted:

[51] In principle the Joint Farming Parties support PC1 signalling future actions likely to be required to achieve the long-term water quality outcomes. For the whole community, but farmers in particular, signalling what will be required will assist with planning and decision making into the next decade and beyond. The need for farmers to understand the important role they will play under PC1 and the size of the challenge is vital.

[46] We stated in the First Interim Decision that:

[75] The provisions provide no meaningful guidance on the likely extent of future reductions in the four primary contaminants that might be required by individual land use activities in future plan changes. ...

...

[99] ... This results in uncertainties for farmers making important decisions about their future farm management and related investment decisions.

Substantive responses to the First Interim Decision

[47] WRC agreed in its 4 August memorandum that providing indicative long-term reductions in loads of the four contaminants that could be required in each sub-catchment would be valuable for landowners. WRC advised that the relevant information required by Method 3.11.3.6 was in the process of being compiled. This requires WRC to provide information on “[i]nterim target attribute states, current attribute states, reduction required and contaminants of most concern in each sub-catchment”.

[48] WRC also advised in the memorandum that it had developed a tool known as the “Scenario Builder for Waikato Rivers” which it anticipated will form part of the suite of information to be made available through catchment contextual information. It was first time this intention was raised with parties or the Court. Concerns were raised by the JFP, Fish and Game and Mr Pinnell about its possible use in PC1.¹⁹ In their memorandum dated 18 August, the JFP also expressed a

¹⁸ For example, Transcript, at page 928 when questioning Miss Kissick in early October 2023.

¹⁹ Memoranda dated 18 and 15 August 2025 respectively.

wider concern about the significance and number of changes, including that each iteration of Council's drafting seemed to be imposing more and more obligations on farming activities. In particular, they noted that:

[7] ...some of proposed changes suggested by Council are coming from "left field", and all are at the eleventh hour. The Court will no doubt be conscious to ensure that the final wording of PC1 is resolved in a way which does not create issues of natural justice for those parties who have invested years of effort and enormous amounts of money into the PC1 process to date.

Our evaluation and findings

[49] The matters addressed by the Scenario Builder were not necessary to satisfy Direction 1. It is a new tool which parties had not had a chance to review, comment on or provide evidence on. The Court shared the parties' concerns as it went well beyond what we had directed and, in our view, was inappropriate for the purposes of Direction 1.

[50] We reiterated in our minute dated 27 August and at the September JTC that the information to be provided should be as required by Method 3.11.3.6 (b), amended to indicate "currently anticipated future attribute [states] and load reductions required" in individual sub-catchments. In our post-conference minute dated 15 September, we recorded:

[8] WRC clarified in relation to the Court's Direction 1 that the Scenario Builder will not be referenced in the contextual information to be provided in accordance with Method 3.11.3.6. WRC also confirmed that the information it will provide relating to longer-term future contaminant loads will be provided for information only and that it will not take it into account when processing resource consent applications.

[51] The amendment is not included in its PC1 Final and we further direct WRC to include it.

Scope

[52] The Notified Version is clear that PC 1 is the first 10-year stage of an 80-year programme. The background and explanation in both the Notified and Decisions Versions stated that the Vision and Strategy of Te Ture Whaimana is being given

effect to in Chapter 3.11 by, among other things:²⁰

Giving people and communities time to adapt to the requirements of Chapter 3.11 and supporting actions to achieve short-term objectives while being clear that further reductions in nitrogen, phosphorus, sediment and microbial pathogen losses from land will be required in subsequent regional plans.

[53] It was also clear from both versions that the extent of further reductions required will vary significantly between sub-catchments but provided no guidance on the extent to properly inform farmers about how they would be affected. In the interests of efficiency and effectiveness of the provisions, in particular, we considered that appropriate guidance needed to be provided. Doing so provides clarity without changing the intent and no party objected to the proposal or raised any issues relating to scope.

[54] We are satisfied that no such issues arise.

Direction 2: Matters relating to ss 70 and 107²¹

[55] Direction 2 required WRC to:²²

Advise if it currently has sufficient monitoring data to determine which sub-catchments will need to comply with the provisions of ss 107(2A) and 70.

The issue

[56] Direction 2 was largely overtaken by the amendment to s 70 of the RMA, which came into force on 21 August 2025, some three months after our First Interim Decision was issued. The amendment required that before including permitted activity rules in PC1, if the regional council (or in this case the Court) is satisfied the effects described in s 70(1)(d), (f), or (g) are already in the receiving waters, we must be satisfied that the permitted activity standards, or those standards

²⁰ Notified version of proposed Waikato Regional Plan Change 1 – Waikato and Waipā River Catchments, Part A, at page 13.

²¹ Refer First Interim Decision, at Part B10, and Second Interim Decision.

²² First Interim Decision at [1184].

in combination with any other provisions in the plan, will contribute to a reduction of those effects over a period no greater than 10 years after PC1 becomes operative.

[57] We found in the Second Interim Decision:

[4] Our primary findings are as follows:

...

- (g) We are satisfied that the inclusion of permitted activity Rule 3.11.4.3 is the most efficient and effective way to achieve the objectives in accordance with s 32 of the RMA. We are satisfied that Permitted Activity Rules can be included in PC1 in accordance with current amended s 70 of the Resource Management Act.

[58] At [38] in that decision, we directed parties to advise the Court:

- (a) If they consider further evidence needs to be provided that could potentially mean a different determination would or could result.
- (b) Identify any matters of fact, expert opinion or law of direct relevance to our s 70 evaluation that they consider have been omitted or not been interpreted or referenced appropriately.

Substantive responses from parties

[59] Responses were received from WRC, Forest and Bird and Fish and Game (“the parties” for the purposes of this Direction 2) and jointly from the JFP and Wairakei Pastoral Limited (**WPL**).

[60] WRC stated in its memorandum dated 23 March 2026:

[3] ...the Council considers that no further evidence needs to be provided, and that additional evidence would not materially assist the determination of the issues addressed in the Decision. Further evidence would also risk unnecessary delay to PC1 becoming operative, ultimately compromising improved environmental outcomes.

[4] ... the Council has not identified any matters of fact, expert opinion or law of direct relevance to the Court’s section 70 evaluation that have been omitted or not been interpreted or referenced appropriately.

[61] The parties did not consider that further evidence was required and made it clear that they were not challenging the availability of permitted activity status for PC1 *per se*:²³

[5] ... Rather, RFBPS/Fish & Game question whether more certainty is needed over permitted activity *standards*, in order that the Court to have the necessary confidence under s70. Objective 2 of PC1 aims for ‘interim target states’ to be met no later than 10 years after Chapter 3.11 becomes operative.
...

[62] They concluded by stating:

[25] RFBPS would be happy to address these matters at a judicial conference, as directed by the Court, and would also be content for the Court to consider this matter ‘on the papers’.

[26] While Fish & Game raise these concerns for the Court's consideration, Fish & Game advises it will abide the Court's decision in relation to section 70, while reserving the right to participate in any subsequent decisions of the Court on matters not raised in the Second Interim Decision, or any further exchanges of evidence directed by the Court.

[63] We note that they generally agreed that

[9] RFBPS/Fish & Game agree with the findings in the Decisions that effects described in subsections (1)(d), (f) and (g) already occur in the receiving waters.
...

[14] ... the most effective mitigations for activities with a ‘low risk’ are stock exclusion from waterways, improved filtering capacity of riparian areas, continued improvements in farm dairy effluent management and actions to reduce losses from critical sources areas (for example, tracks and races).
...

[13] Based on the above, the legal issues RFBPS/Fish & Game identify with the Court’s Second Interim Decision are:

(a) ... RFBPS/Fish & Game agree that the permitted activity rules and conditions meet the definition of “standards” for the purposes of the s 70 test.
...

²³ Joint memorandum of counsel for RFPBS and Fish & Game dated 25 March 2026 at [5]. We note that this memorandum erroneously restarts from paragraph [6] after paragraph [14], hence the duplication of paragraph numbers.

[14] For the purposes of being satisfied as to a reduction in section 70 adverse effects, RFBPS/Fish & Game accept the Courts finding that that reduction in contaminants measured in water can be used as proxy. RFBPS/Fish & Game also agree with the Court that there is no single metric that can be used as a proxy of ecosystem health. ...

[64] The parties set out the way in which they submitted the Court should approach this matter and identified a range of issues that required consideration, including their view that WRC's modelling predictions should be considered as part of "best information" as defined in clause 1.6 of the NPSFM; what constitutes a reduction in effects; delays in mitigations taking effects; the progressive weakening of standards and the extension of timeframes from the time of the Decisions Version; increased affordability; the reliance on FEPs; and the associated discretionary elements to be certified by CFEPs.

[65] The JFP initially advised they would not be responding to the Second Interim Decision but in their joint memorandum with WPL dated 17 April, they provided an initial response to the matters raised in the joint memorandum from the parties. The purpose of the memorandum was to record their desire to be heard on the parties' memorandum, should the Court be minded to either set down a judicial conference or alternative case management steps.

[66] It went on to say:

[4] In addition, if as a consequence of the F&B/F&G Memorandum the Court intends to reconsider its findings as to the interpretation and application of s70, WPL would appreciate an opportunity to discuss the Court's interim findings in respect of the rendering of freshwater unsuitable for consumption by farm animals and conspicuous changes in the colour and visual clarity of receiving waters. WPL did not raise the issue earlier as it did not wish to see any further delay for PC1, did not consider further evidence needed to be provided that may lead to a different result, and did not consider there were matters of fact or expert opinion directly relevant to the Court's s 70 evaluation that had been omitted or misunderstood.

[67] While we noted the submission, it required no further action from the Court as we remain satisfied with our findings in the Second Interim Decision as to the interpretation and application of s70.

Our preliminary response

[68] Many of the matters raised by the parties were also of concern to the Court, including stock exclusion and its timing for different sloped land, appropriate setback distances and other matters raised in their joint memorandum. We explored them in considerable detail through our questioning of witnesses for different parties, by the direction of further expert conferencing in relation to setbacks from streams and stock exclusion and through an extensive iterative process of directions, submissions and JTCs in relation to the matters in dispute. They were addressed comprehensively in our interim decisions.

[69] Inevitably for a plan that is primarily directed to the control of farming activities, it was necessary to ensure we had a good understanding of the implications of different plan provisions for farming operations, which we explored in depth with farmers and their expert advisors. That evidence was considered alongside that relating to environmental effects given by the parties and other witnesses.

[70] Our overall findings are set out in the two Interim Decisions and comprehensively bring together the large number of inter-related issues that are relevant to our consideration of whether permitted activities can be included in PC1, including those raised by the parties through the appeals process and in their recent joint memorandum.

[71] We note that the parties stated in the memorandum that Objective 2 of PC1 aims for ‘interim target states’ to be met no later than 10 years after Chapter 3.11 becomes operative. They also expressed the view that WRC’s modelling predictions should be considered as part of “best information” as defined in clause 1.6 of the NPSFM.

[72] These are particularly important issues and we considered the veracity of WRC’s modelling predictions in the First Interim Decision, including by reference to other related evidence, which clearly demonstrated that the modelling had

significant limitations. After identifying concerns about several aspects of the modelling, we stated:

[610] Overall, when Dr Olubode-Awosola's limitations of the model are taken into account, together with the changed circumstances since the model was developed, the uncertainty as to what extent those are now reflected in the model and question marks about cost assumptions, it raises significant questions about the reliance we can place on the economic modelling predictions for the purposes of PC1 decision-making.

...

[612] ... our overall finding is that we can have limited confidence that the model predictions reliably represent the situation that exists today.

[73] We referred to our concerns about the Council Hearing Panel's assumption that a 20% reduction improvement in water quality attributes could be achieved in 10 years, stating:

[1149] ... We have previously indicated our concerns about a number of assumptions used in the modelling, but the model results at least suggest that the Panel's assumption is not supported by subsequent modelling and may not represent what will be achievable.

...

[1155] While we understand the reasons for including interim targets, they raise expectations that may not be met. Based on the evidence, they cannot be anything other than aspirational, their achievability is uncertain at best and reliable monitoring unlikely to be possible in the case of nitrogen at least. They do not form an appropriate metric for measuring the success or failure of PC1 and need to be seen as representing a "best endeavours" target only.

[74] Before addressing other specific matters raised by the parties, we record that the following preliminary matters were set out at the start of the First Interim Decision:

[5] Many changes were made to the Notified Version by the Council's Hearing Panel, some of which had significant implications. Further changes were proposed by Waikato Regional Council (**WRC**) in its Final Proposal, during the hearing and subsequently, some of which also had significant implications. In a number of cases, changes were not supported by robust evidential justification and/or an appropriate s 32AA evaluation in accordance with the Resource Management Act 1991 (**RMA**) and/or demonstration of scope.

[6] Some of the proposed changes introduced imprecise language and risks to the coherence and internal consistency of the plan change bringing

with it the potential to adversely affect its efficiency and effectiveness. A key requirement is to ensure that the provisions are as clear on their face, certain, workable, practicable, enforceable and as equitable as possible, despite the challenging combination of circumstances. Unless that is achieved, PC1 will likely be subject to on-going disputes.

[75] While the parties referred to the progressive weakening of standards and the extension of timeframes from the time of the Decisions Version and increased affordability, subsequent to the issue of the First Interim Decision, the JFP expressed concern that each iteration of Council's drafting seemed to be imposing more and more obligations on farming activities.²⁴

[76] This reflects a tension that existed through the appeals process. From the Court's perspective, insufficient consideration had been given to practicability and due RMA process earlier in the development of plan provisions. As just one example, the requirement that permitted activities achieve stock exclusion within one or two years of PC1 becoming operative²⁵ would have been impossible for most if not all farms, given the lengths of streams involved or the availability of resources to undertake the work.

[77] A key focus for the Court was ensuring that reasonable progress towards achieving Te Ture Whaimana and the objectives of PC1 will occur within its 10-year term, while ensuring that the provisions are workable, practical and affordable. If they are not, PC1 will not deliver the outcomes that are sought and necessary and will be seen as a failure. In our s 32AA evaluation in the First Interim Decision, we stated:

[1171] In relation to PC1 as a whole, we have identified reasonably practicable options and evaluated them in some detail in many cases. We have assessed the efficiency and effectiveness of the provisions both individually and holistically and are satisfied that they are the most appropriate way to achieve the objectives. The provisions reflect the importance of practicability and the need to allow elements of discretion for WRC when applying them when starting a journey as challenging and uncertain as that required to deliver Te Ture Whaimana. We find that the risk of not acting in accordance with the

²⁴ Joint memorandum dated 18 August 2025 that three versions of track changes to PC1 had been put forward (to the parties and/or the Court) between 11 July 2025 and 8 August 2025, at [4] and footnote 1.

²⁵ Decisions Version, at Schedule C4.

provisions as amended by our decision would be significantly greater than the risk of acting.

Responses to particular matters raised by Forest and Bird and Fish and Game

[78] While we have considered all the matters raised, we do not address those raised when we are satisfied that they have been addressed appropriately in the Interim Decisions. We limit our responses to paragraphs of most relevance to our determinations relating to s 70.

[79] We first address what appears to be an apparent misinterpretation. In the second paragraph of the joint memorandum numbered [11], the parties submitted:

- (a) ... The Court has however confirmed that requirements to reduce stock numbers and scale/intensity of an operation can be conditions under controlled activity status (i.e. without having the effect of declining consent).

[80] Paragraph [196] of the First Interim Decision stated:

... We do not accept Fish and Game's submission that stock numbers and the scale or intensity of an operation represent a fundamental change to the nature of the operation sufficient to nullify the grant of consent. Such considerations are a normal part of farm management and an accepted component of managing adverse effects on the environment.

[81] The statement does not refer to consent conditions and the interpretation in the joint memorandum cannot be inferred from the First Interim Decision.

[82] In the first paragraph numbered [13] of their joint memorandum, the parties submitted:

[13] A Schedule D1 Farm Environment Plan (**FEP**) must demonstrate at 5 yearly intervals that diffuse discharge is reducing over time, or is already as low as practicable. This provision cannot be relied on to fulfil s70, because the evidential basis for the permitted activity is required to exist before the permitted activity is inserted into the regional plan.

[83] The footnotes to the above paragraph referred to *Southland Regional Council v Southland Fish & Game Council* (**Southland**),²⁶ and *Environmental Law Initiative v Canterbury Regional Council* (**ELI**).²⁷

[84] In *Southland* the primary issue in dispute was whether it was necessary to demonstrate that none of the s 70(1)(c)-(g) effects will be likely to arise before a permitted activity rule could be included in the plan. That related to a version of s 70 that has since been amended. In PC1, the evidence establishes that the effects listed in s 70(1)(d), (f) and (g) are already occurring, limiting the relevance of the *Southland* decision to PC1. However, of relevance to PC1, the Court in *Southland* did record that:

[23] ... Section 70 mandates an outcome and that outcome must be assured by the proposed rule before it is included in the regional plan". Plainly, whether that outcome is achieved by the rule, whatever its precise terms, is an evaluative matter upon which SRC must be satisfied, before the rule's inclusion. There may be cases where a rule of this type will be self-evidently effective. Nothing in this judgment should be taken to presume that a particular form or type of evaluation is needed.

[85] The second case cited in that paragraph, *ELI*, involved an application to judicially review the Canterbury Regional Council's decision to include a rule in the Regional Plan that provided that the discharge of nutrients onto or into land that may result in a contaminant entering water is a permitted activity provided that certain conditions were met. The application was made in December 2023 and also related to s 70 before it was amended. That version addressed the need for a Council to be satisfied that certain stipulated environmental effects were not likely to arise from a discharge of contaminants before including the rule in a regional plan that allows such a discharge as a permitted activity. That is not at issue in PC1.

[86] The *ELI* decision did not introduce any additional case law to that we have already taken into account, but it reinforced it. It also emphasised the need for the decision-making record to conclusively demonstrate that s 70 had been properly

²⁶ *Southland Regional Council v Southland Fish & Game Council* [2024] NZCA 499.

²⁷ *Environmental Law Initiative v Canterbury Regional Council* [2025] NZHC 4156.

addressed, or to demonstrate there was an adequate evidential basis upon which to make the decision.²⁸

[87] Returning to the parties' submission, after determining that the effects listed in s 70(3) were occurring, we applied the Supreme Court's approach²⁹ to the threshold test to be satisfied, which is referred to in the Second Interim Decision, which is:

Significant in the basic requirements stated in ss 93(1) and 94(2) are the double emphasis on "satisfied", the strongest decisional verb used in the Act, the etymology of "satisfy" (to do enough), and a standard meaning relevant in this context – to furnish with sufficient proof or information; to assure or set free from doubt or uncertainty; and to convince; or to solve a doubt, difficulty.

[88] We also noted the Court of Appeal's reference in *Southland* to the need to be satisfied that a rule will "operationally ensure" the required outcome. We are satisfied that will be the case in terms of the overall plan provisions, and that we must rely of their effective application being ensured by WRC in accordance with s 30 of the RMA.

[89] The evidential basis that we relied on is set out in some detail in Part K of the Second Interim Decision, headed "Our evaluation of reductions in contaminants likely to be achieved by PC1 mitigations and likely timeframes before they start to reach receiving environments". While we noted the FEP requirement to demonstrate a reduction in s 70 effects, we did not rely on it as the basis for our decision. After noting the requirement, we listed five specific actions required by Schedule D1 that will contribute to a reduction in s 70(3) effects within 10 years. Elsewhere in Part K, we listed the many other relevant factors that will contribute to reductions in contaminant loads, which is the essential starting point for a reduction in s 70 effects to occur.

[90] The second paragraph [12] in the joint memorandum stated:

²⁸ At [115].

²⁹ *Westfield (New Zealand) Limited v North Shore City Council* [2005] NZSC 17 at [52].

[12] Finally, in requiring analysis of the permitted activity rule ‘in combination’ with other plan provisions, we note section 70 does not allow reliance on matters sitting outside the plan such as guidance material or guidance notes. Neither does it allow reliance the possibility of s128(1)(b) reviews of consents.³⁰

[91] While we set the reasons for the introduction of s 70, including by reference to the Regulatory Impact Statement: *Managing discharges under s 70 of the Resource Management Act*, that was by way of background to provide a context within which our determination had to be made. We did not rely on anything sitting outside PC1 or anything other than the evidence before us.

[92] In relation to s 128, at paragraph [1141] of the First Interim Decision, which was footnoted in relation to s 128(1)(b) reviews, we referred to an amendment to controlled activity rules that could be required before any amendments to conditions of consent could be required in accordance with s 128(1)(b) as part of Part F33 of the Decision headed “Duration of consent”. It was unrelated to any determination of whether permitted activities could be included in PC1 as that could not be considered at the time, given that s 70 was not amended until after the Decision was issued. We placed no reliance on reviews under s 128(b) as part of our subsequent determination.

[93] The second paragraph numbered [13](b) in the joint memorandum stated:

The options for the Court are not confined to “permitted activities” or “no permitted activities”. The different proposed standards on permitted activities must be considered (at least, in so far as they are within scope - the Court has given a general indication it does not wish to conduct a s293 process).

[94] In footnote 25, it was submitted:

Noting that at [234] of the Decision the Court does not consider alternative provisions in PC 1 could result in better environmental outcomes (for *E-coli*) but it is not entirely clear whether this statement includes consideration of different minimum standards.

³⁰ At [1141] of its First Interim Decision the Court noted that Controlled activity rule 3.11.4.4 includes a matter of control relating to lake water quality but there are no standards referred to, querying whether consent reviews under s 128(1)(b) could be required without amendments to the rules.

[95] The purpose of this submission is unclear to us. Alternative provisions, including alternative permitted activity standards, were considered extensively throughout the appeals process. In Part K3 of the Second Interim Decision we addressed “What is meant by “standards” in s 70(3) and do the permitted activity provisions of the Plan fit within that meaning?” This included consideration of permitted activity standards, the FEP permitted activity requirements of Schedule D1, which require demonstration of compliance with specific standards and the minimum farming standards in Schedule C. These were the subject of on-going amendment throughout the appeals process as alternative standards were determined to be more appropriate. Before approving the final standards, we were satisfied that they were the most appropriate to meet the objectives in accordance with s 32AA of the RMA.

[96] With regard to standards for *E. coli* specifically referenced by the parties, relevant guidelines were discussed in Part G1 of the Second Interim Decision. We adopted the Australian and New Zealand Guidelines for Fresh and Marine Water Quality (2023) guideline drinking water for livestock, which is appropriate.

[97] The second paragraph [13](a), and paragraphs [17], [18], [22] and [23] in the joint memorandum stated respectively:

[13](a) ...An element of discretion can be exercised by appropriately qualified certifiers, in a permitted activity, so long as appropriately framed to include measurable certification.

...

[17] It is accepted that FEPs are a core methodology in PC1 to deliver reductions across all of the four contaminants, but section 70 likely requires a fixed set of actions (permitted activity standards) to be required within timeframes that are *less than* 10 years, to provide confidence of achieving reductions *within* 10 years.

[18] Even if the Court accepts the value judgements to be exercised by the CFEP are *intra vires* for the purposes of a permitted activity rule in a plan, the discretion proposed for stock exclusion standards on low slopes, now makes the Rule less able to be interrogated as to what it will achieve. This level of discretion is likely to be inappropriate in the context of the requirements of section 70 considered against the evidential background of PC1.

...

[22] Through workshopping and consultation (primarily with the farming parties), standards for permitted activities have progressively weakened from the Decisions Version. Significant weight has been given to evidence of farmer attitudes. The weight given to this evidence is at odds with the Court’s view that “*predicting the future 10 years ahead can only be based on the best currently available information and an expectation that the plan provisions will be implemented efficiently and effectively*”. Technical scientific evidence on what is required to achieve instream water quality outcomes should, in our submission, be given more weight.

[23] Together with substantial flexibility contained within the standards, and importantly, for timeframes in which mitigations are to be actioned, the evidence of reductions in the effects described in (1)(d), (f) and (g) in the receiving waters within 10 years, does not satisfy the requirements of s 70. Section 70 would indicate a streamlined controlled activity consents process is more appropriate, rather than the more expansive discretion exercised on a FEP-by-FEP basis with external guidelines, now proposed.

[98] A footnote to paragraph [13](a) stated:

Environmental Defence Society Inc v NZ King Salmon Co Ltd [2013] NZHC 1992, [2013] NZRMA 371, at [114]–[128] when considering consent conditions, the High Court said qualitative objectives can be certified by appropriately qualified certifiers so long as appropriately framed to include measurable certification. The point was not overturned on appeal. Standards for permitted activities should generally be certain and should not leave key decisions for a later date. In an earlier decision *A R and M C McLeod Holdings Ltd v Countdown Properties Ltd* (1990) 14 NZTPA 362 McGechan J said “[t]he objective, but vaguely worded criterion, is to be assessed for validity on its own degree of certainty, or lack of certainty, and not by some automatic response to a label imported from another concept”, stating that the question is to what extent and degree are value judgements involved and “[t]he question must always be: is it sufficiently certain to be understandable and functional?”.

[99] The High Court decision in *Environmental Defence Society v King Salmon (EDS)*³¹ did not address permitted activities. The matters for which the issue of unlawful delegation were raised were distinguishable from those in PC1. In *EDS*, the delegation at issue was the need for water quality standards to be set in the future, by a party that was not the decision-maker, to take into account the results of monitoring and analysis still to be undertaken. CFEPs will not be delegated responsibility to do that in their certification role in PC1.

[100] The criteria for the appointment of CFEPs are set out in Schedule D4 of PC1. We are satisfied that meeting those criteria will ensure that certifiers will be appropriately qualified for their role. Their primary certification role will be to make

³¹ *Environmental Defence Society Inc v NZ King Salmon Co Ltd* [2013] NZHC 1992.

an assessment of the farm and to prepare an assessment report detailing the reasons why the FEP either meets or does not meet the requirements of Schedule D1.³²

[101] For a permitted activity in accordance with Rule 3.11.4.3, this will require the CFEP to determine if the FEP meets or does not meet the conditions of the rule and the minimum farming standards in Schedule C. It will also require the CFEP to determine if the FEP has or has not been prepared in accordance with Schedule D1. To meet the Schedule D1 requirement, the CFEP will be required to determine if:

- (a) the FEP demonstrates there will be a general improvement in farming practice to reduce the risk of diffuse discharges of nitrogen, phosphorus, sediment and microbial pathogens except where such discharges are already as low as practicable and that actions have been prioritised in accordance with Policies 1(b) and 1(f); and
- (b) the FEP demonstrates compliance with minimum standards in Part D of the Schedule.

[102] We are satisfied that PC1 does not unlawfully delegate decision-making roles from WRC to CFEPs that it ought to exercise itself. CFEP roles are clearly defined and constrained and will be undertaken in accordance with guidelines prepared by WRC, meaning WRC sets the rules and can modify them if necessary, and approves the CFEPs who will ensure the rules are complied with. This limits the discretion delegated to CFEPs to matters of judgement that are within their expertise, which they are obligated to undertake with professional impartiality. The High Court stated in *EDS* “it can reasonably be inferred that those with the expertise to carry out this work will, in its detail at least, apply matters of judgement within their expertise as to how the measurements are undertaken and reported”.³³ We are satisfied the same inference can be made in relation to the role of CFEPs in PC1.

³² PC1 Schedule D3, Part B(1).

³³ *Environmental Defence Society Inc v NZ King Salmon Co Ltd* [2013] NZHC 1992, [2013] NZRMA 371, at [120].

[103] The last sentence of paragraph [22] of the joint memorandum states:

Technical scientific evidence on what is required to achieve instream water quality outcomes should, in our submission, be given more weight.

[104] Technical evidence was examined in considerable detail and given the appropriate weight, which included finding that in some cases it could only be given limited weight, as in the case of modelled water quality predictions. Further, technical evidence cannot be considered in isolation from how it can be applied in a way that outcomes will be achieved efficiently and effectively, as required by s 32 of the RMA. This requires consideration of the practical experience of farm operators and finding an optimum balance in all the circumstances. We are satisfied that has been achieved.

[105] The second paragraph [13](d) of the joint memorandum stated:

The Court states that reductions in effects will occur “*to the greatest extent practicable*” within 10 years by the implementation of the PC1 provisions, including permitted activity Rule 3.11.4.3.28 The test in section 70 does not include the words “*to the greatest extent practicable*”. By using this wording, there is a danger in conflating section 70 with section 32AA.

[106] Policy 2 of the Decisions Version required farming activities with a Nitrogen Leaching Loss Rate within the moderate range to demonstrate that either the Nitrogen Leaching Loss Rate is already as low as practicable or will reduce to the lowest practicable level over an appropriate specified period. That provision remained unchanged through the appeals process except that “appropriate specified period” was replaced by “within 10 years” to reflect determinations made in the First Interim Decision.³⁴

[107] One of the principles guiding our s 70 evaluation reflected that earlier determination by the WRC Hearing Panel and was:³⁵

³⁴ First Interim Decision at [544], which specifically referred to and took into account the eight-year time-frame proposed by Forest and Bird,

³⁵ Second Interim Decision relating to s 70, at [58](d).

For permitted activities to be included in the Plan, we must be satisfied that the provisions will result in a reduction in those adverse effects to be the smallest amount practicable within 10 years.

[108] Part K of the Second Interim Decision identified Policy 2 as a key provision, along with other key provisions and these were considered as part of our s 70 evaluation. The predominant basis of our evaluation was a bottom-up assessment of what different standards and schedules would deliver. There was no conflation of or reliance on “to the greatest extent practicable” in our evaluation. However, as we determined that the provisions are, first and foremost, the most appropriate to meet the objectives of PC1 in accordance with s 32AA, and, at the same time that they will result in the s 70(3) effects being reduced to the greatest extent practicable within 10 years, an optimum outcome should be achieved.

Our overall findings

[109] We have considered the matters which Forest and Bird and Fish and Game submitted should be addressed in our approach to s 70 and addressed them in turn. Our Second Interim Decision documents the evidential and legal basis on which we were satisfied that the permitted activity standards, in combination with other provisions of PC1, will contribute to a reduction in s 70(3) effects within 10 years and determined that permitted activities can be included in PC1 in accordance with new amended s 70. We remain satisfied that is the case.

[110] While we noted the FEP requirement to demonstrate a reduction in s 70 effects, we did not rely on it as the evidential basis for our determination.

[111] We are satisfied that PC1 does not unlawfully delegate decision-making roles from WRC to CFEPs that it ought to exercise itself.

[112] In relation to the most effective mitigations referred to in the first paragraph [14] of the joint memorandum, we have taken into account the extensive and wide-ranging expert evidence and legal submissions presented to the Court by all parties, including Forest and Bird, Fish and Game, the Director-General, and farming parties, over a period of more than two and a half years. This provided a

comprehensive basis for our decision-making and we are satisfied that our final determinations are based on the best available information and appropriately address the matters raised by Forest and Bird and Fish and Game in their joint memorandum.

Scope

[113] No issues of scope arise.

Directions 3 and 25: Single operating units³⁶

[114] Direction 3 and Direction 25 are inter-connected as they both address aspects of “single operating units” and we considered them together, as WRC did. The directions required WRC to, respectively:³⁷

Propose new wording to ensure clarity that farming and CVP activities are to be managed as single operating units, generally as defined by Mr Trebilco but subject to final determination by the Court in response to a final proposal by WRC after consultation with parties.

...

Recognise that the definitions of “property”, “enterprise” and “single operating unit” are confusing and consider whether [they] should be replaced by a definition of “single operating unit” that includes leased land and provides greater overall clarity.

The issue

[115] An issue relating to definitions that arose during the appeals process was the scale at which land use activities are to be managed in PC1.

[116] In Part F24 of the First Interim Decision, we stated:

[935] We are satisfied from the plan provisions themselves, the s 32 report, the Recommendation Report and the submissions and evidence presented to the Court that the provisions relate to the management of individual farm operating units. These may be a stand-alone drystock, arable or CVP activity or, in the case of dairy farming, a single milking platform and associated effluent disposal system.

³⁶ Refer Part F24 and WRC memorandum dated 2 August, from [50].

³⁷ First Interim Decision at [1184].

...

[964] It appears to us that the purposes of all of these definitions [“*property*”, “*single operating unit*” and “*enterprise*”] are linked in some way to defining the scale at which the management of farming operations is to be regulated in PC1. We are satisfied that this was clearly intended to be at a single operating unit level, which we consider to be the most appropriate way to meet the objectives, as noted above.

[965] In that case, the definition of most relevance is “single operating unit” for which no definition was provided in the Notified Version. We agree that a definition must be included in PC1 and generally agree with the definition proposed above by Mr Trebilco in his delegated role for WRC. We consider it should be made clear that where land is referred to in the definition, it includes leased land that is used for the operation.

[966] Consideration needs to be given to whether a definition of “property” remains appropriate with the inclusion of the definition of “single operating unit” in PC1 and how leased land is to be provided for. We will direct WRC to propose any further amendments it recommends should be made and to address the issue of scope to make any changes proposed.

[117] We directed WRC to:

[18] ... propose a response to matters raised in the First Interim Decision in consultation with other parties for final determination of the Court.

Substantive responses to the First Interim Decision

[118] WRC received responses from the JFP, WPL and HortNZ.

[119] WRC reviewed the use of the terms “property” and “single operating unit” and made a number of minor amendments to include reference to properties (i.e. plural) rather than property, as listed in a footnote to paragraph 56 of its memorandum dated 4 August 2025.

[120] With regard to Direction 25, WRC considered it is appropriate to retain the use of both terms “property” and “single operating unit” for reasons set out in paragraphs 6 to 17 of the consultation document included as Annexure A of the memorandum provided to parties in response to the Interim Decision. One reason was:

[17] WRC agrees that it is appropriate that farms should be allowed to be managed as single operating units, and that consents and FEPs should be allowed at that level. Flexibility needs to be provided for consents and FEPs at the property level where this is appropriate for a particular farmer/operator. This is set out in the proposed note under the rules heading. However, as stated above, some provisions (particularly permitted activity provisions) need to apply at each property. Some uses of the term “property” in PC1 therefore remain appropriate.

[121] WRC proposed an amendment to the definition of “single operating unit” to include leased land as directed by the Court. WRC also proposed that the definition of property be amended to include leased land as follows, as sought by the JFP:

[55] **Property:** For the purposes of Chapter 3.11, means, to the extent that the land is within the Waikato and Waipā River catchments shown in Map 3.11-1, one or more allotments contained in single Computer Freehold Register (record of title), and also includes all adjacent land that is either in common ownership or leased but contained in separate records of title, including records of title separated only by a road, river or utility corridor, and is within a single operating unit for the purpose of management.

[122] The JFP set out the reasons for their request in their memorandum to WRC and, having considered them, we agree with WRC’s proposed amendments to the definition.

Amendments sought by WPL

[123] WRC recorded that WPL requested amendments related to this direction,³⁸ including that the definition of “property” be amended by deleting the final phrase: “and is a single operating unit for the purpose of management”. WRC did not accept the proposed amendment as it was concerned it could mean that large corporate farms with multiple single operating units (such as multiple dairy farms) would be considered to be individual properties for the purposes of PC1, which would then allow a single Farm Environment Plan (**FEP**) for these large groups of farms under current provisions.³⁹

³⁸ At [58](c).

³⁹ At [59](c).

[124] In its memorandum to WRC dated 25 July, WPL stated:

[4] ... it is unclear whether WRC has reviewed the use of the term “property” in the provisions and identified all instances where “single operating unit” is the more appropriate term.

[5] If both terms are to be used, the definition of “property” needs to be amended in the manner requested by WPL.

and went on to set out its reasons before concluding:

[8] WPL respectfully suggests a thorough review is needed of the current use of the terms “single operating unit”, “farm” (undefined) and “property” within PC1. On the basis of its own review, revision is required throughout the provisions to ensure the correct term is used to capture the Court’s intent of managing farming at the scale of the individual operating unit. ...

[125] WPL also requested deletion of “and is a single operating unit for the purpose of management” in its subsequent memorandum dated 15 August to the Court. However, WPL stated that it accepted the Court’s finding that farming (including both the use of land and the associated diffuse discharges) is to be regulated and managed at the single operating unit level. It went on to say in [10]:

- (a) ... WPL accepts the Court’s finding that farming (including both the use of land and the associated diffuse discharges) is to be regulated and managed at the single operating unit level. It understands this will require a separate FEP for each operating unit and, except where a permitted activity, a separate consent for each operating unit.
- (b) WPL acknowledges and accepts that the contiguous landholding and individual property titles owned by WPL collectively known as “Wairakei Estate” is *not* a single operating unit. Farming on Wairakei Estate occurs across multiple operating units, some of which occur across more than one title and some of which occur together with other operating units within one title.
- (c) The amendment sought by WPL to the definition of property will not result in Wairakei Estate becoming a single operating unit. This is not the consequence of deleting the reference to “and is a single operating unit for the purpose of management” from the definition of property. Rather the consequence of deleting the reference is that all parts of Wairakei Estate form part of a property.

HortNZ's position

[126] WRC recorded that:

[58] ...

(f) HortNZ stated that commercial vegetable production (CVP) operations are not single operating units, and their inclusion as such would likely cause difficulties in consenting, resulting in farm plans that do not relate to a single operating unit, but rather relate to a CVP operation operating across multiple properties for crop rotation.

...

[59] ...

(j) WRC agrees with HortNZ that the definition of single operating unit does not relate well to CVP operations where crop rotations can occur across multiple and changing properties. ... The definition works for pastoral and cropping properties but would be restrictive if applied to CVP operations. This is addressed further under Direction 17 below, ...

[127] In its memorandum dated 25 July to WRC,⁴⁰ HortNZ sought, in addition to its request to remove commercial vegetable production (**CVP**) from the definition of “single operating unit”, that CVP be removed from rule 5 in the Whangamarino under Rule 3.11.4.6. In its memorandum dated 15 August to the Court, HortNZ referred to its broad concern about the practicalities of consenting CVP activities under PC1. While we agreed with the removal of CVP from the definition of single operating unit, the rules relating to the consenting of CVP activities were considered in detail through the hearing and we will not reopen matters that have already been determined.

The September Judicial Telephone Conference and resulting directions

[128] In our pre-conference minute dated 27 August, we accepted that:

[18] ... unless any other party has a different view, we agree that pastoral farming activities are to be managed as single operating units but not CVP activities.

[19] We accept that it is appropriate to retain the use of both terms “property” and “single operating unit” ...

⁴⁰ At [13].

[129] We invited WRC and WPL to address their differences and other parties with a view to raise them at the JTC.

[130] In our post JTC minute dated 15 September, we directed:

[21] As agreed at the JTC, WRC is to undertake a review of all provisions, including methods, schedules and Table 3.11-2, that include reference to “property” and “single operating unit” to ensure clarity, workability and practicability in consultation with Ms Carruthers. Other parties must be provided with the opportunity to comment before any proposed amendments are submitted to the Court, accompanied by details of any matters remaining in dispute and relevant comments received from parties.

[22] When considering any amendments proposed, the Court will want to ensure that these matters have been appropriately addressed for single operating units in general and for those on WPL land. We will want to understand what the implications of removing “and is a single operating unit for the purpose of management” from the definition of property would be. We will also want to understand if there would there be any conflict with non-complying activity Rule 3.11.9, including because it is a land use rule only and not a hybrid rule that includes diffuse discharges, which other rules do.

[23] The above matters are not intended to be exclusive and we direct WRC and Ms Carruthers acting for WPL to address all matters they consider relevant ...

WRC’s further proposals and parties’ responses

[131] WRC’s response was set out in two memoranda dated 31 October and 17 November. Consultation documents dated 17 and 20 October and responses from Fish and Game, HortNZ, the JFP and WPL were attached to the first memorandum.

[132] WRC stated that it undertook a detailed review of all provisions and in responding to the Court’s directions, it had considered the following two options:⁴¹

Option 1 - Continue the use of “property” (changed to “farm property”) for permitted provisions and land use change but remove “property” from other consented farming provisions and replace “single operating unit” with “farm operating unit”; and

Option 2 - All farming provisions (except for land use change) use only “single operating unit”, which is replaced with “farm” to improve relatability for farmers. “Property” would be retained for land use change provisions.

⁴¹ Memorandum of counsel for WRC dated 31 October at [43].

[133] Three responses were considered in the October memorandum in relation to the options, with their primary positions being, subject to matters of detail:⁴²

- (a) WPL supported Option 2 on the basis that it uses the correct terms to capture the Court's intent of managing farming at the scale of the individual operating unit whereas Option 1 failed to do so.
- (b) The JFP did not have a preference but considered that Option 2 would better address their concerns and identified concerns about the possible implications of Option 1 as drafted.
- (c) Fish and Game preferred Option 1 but did not give reasons.

[134] After considering the responses, WRC proposed to proceed with Option 2 for the reasons set out by WPL and the JFP. We also considered the reasons given by WPL and the JFP for preferring Option 2 over Option 1 and that WRC agrees with them. As Fish and Game did not give reasons for preferring Option 1, we could not consider them.

[135] Overall, we accept WRC has addressed appropriately the concerns raised by other parties⁴³ by amendments to provisions it considered appropriate and we accept them.

[136] HortNZ again raised concerns about the consenting pathway for CVP activities and also expressed its concern about the effects of s 107 of the RMA and the restrictions it placed on CVP activities being able to obtain consents. It remained of the view that a s 293 process was required to enable a controlled consenting pathway for them. Section 107 relates to applications for resource consents and cannot be addressed by the Court at this stage. Consenting pathways for CVP were addressed in detail through the hearing and we do not see a need to revisit the determinations already made or to direct a s 293 process.

⁴² Memorandum of counsel for WRC dated 17 November at [12].

⁴³ Noting that communications with WPL continued after PC1 Final was submitted.

[137] For completeness, we record that WRC revisited the question of whether CVP activities should be classified as single operating units as part of its responses to Directions 3 and 25 in its memorandum dated 31 October 2025 and suggested CVP be included within the “single operating unit” definition. HortNZ did not support the suggested change and on further reflection, WRC agreed with HortNZ and proposed additional amendments to the provisions as part of Option 2. These are set out in WRC’s memorandum dated 17 November⁴⁴ and we accept them.

Our findings

[138] We find that Directions 3 and 25 are met by the amendments included in PC1 Final.

Scope

[139] The proposed amendments improve the clarity of the provisions and do not alter their intent, meaning no issues of scope arise.

Direction 4: Definitions of intermittent and ephemeral waterbodies⁴⁵

[140] Direction 4 required WRC to:⁴⁶

Propose appropriate wording to make it clear in Schedule C that both definitions of intermittent and ephemeral waterbodies apply for the purpose of Clause 4, not the WRP definition

[141] We accept the amended wording included in PC1 Final.

⁴⁴ At [15].

⁴⁵ Refer First Interim Decision at Parts C7 and F11 and WRC memorandum dated 4 August, from [60].

⁴⁶ First Interim Decision at [1184].

Direction 5: Overseer reference files⁴⁷

[142] Direction 5 required WRC to:⁴⁸

Consider if a reference file method is to be included to address changes in Overseer versions in consultation with the parties and make a recommendation on an appropriate method, if required, for final determination by the Court (Part E16).

The issue

[143] In part E16 of the Interim Decision we found, after a comprehensive consideration of alternatives, that Overseer remains the most appropriate of the available tools to monitor changes in nitrogen loss risk from dairy farms with more than a low risk of diffuse discharges of the primary contaminants. This required us to consider if a reference file system was necessary to reflect changes in nitrogen loss predictions in the event of future Overseer version changes.

Substantive responses to the First Interim Decision

[144] WRC stated in the consultation document attached to its 4 August memorandum that:

[35] ... it is important to understand how Overseer Limited introduces new versions of the model in their system. Overseer Limited retains records of all Overseer analyses undertaken, including records of all input data. When new versions of the Overseer model are released, all analyses (and publications) in the database are updated using the most recent version. Therefore, when a farmer uses Overseer, they are always interacting with the current version of the model. Farmers will therefore always be able to check how their current leaching risk compares to previous analyses using the latest version of Overseer.

[36] In addition, when the model version is updated, if analyses had results in the previous model version, a record of any change is shown in their farm account and is depicted in the audit log for each analysis.

...

[49] Overall, with respect to the three identified uses of Overseer, there does not seem to be a need for a reference file method to be used in PC1 to

⁴⁷ Refer First Interim Decision at Part E16 and WRC memorandum dated 4 August 2025, from [67].

⁴⁸ First Interim Decision at [1184].

account for Overseer versions, given that Overseer Limited updates all analyses in the database to use any new version that is released.

...

[50](i) Five yearly Overseer reporting would greatly assist WRC in satisfying the section 35(2)(b) requirement to monitor the efficiency and effectiveness of policies, rules, or other methods in its policy statement or its plan.

...

[51] ... WRC concludes that PC1 should include a requirement for farmers needing consent pursuant to Rules 3.11.4.4 and 3.11.4.6 to undertake five yearly Overseer analyses, or an analysis using an alternative nitrogen leaching loss risk tool in accordance with Schedule B. This would apply to all dairy farms and arable farms. There may be some drystock farmers who require consent under Rule 3.11.4.4 even though they are not intensive farms. WRC does not consider the requirement should be extended to those farms.

[145] WRC concluded that a reference file system is not required. It proposed a new method 3.11.3.9 relating to the provision of Overseer statistics and a new clause 3.11.4.4(5) to require five yearly risk analyses and related amendments.

[146] The JFP was the only party to address the need for a reference file system and agreed with WRC's conclusion that there is no need for one, adding that:⁴⁹

... where possible, the need for a reference file should be avoided. The Joint Farming Parties' experience in other plan changes is that reference file methodologies are inevitably based on assumptions and modelling, adding another layer of complexity and uncertainty to Overseer.

Our findings

[147] We accept WRC's conclusion, supported by the JFP, that there is no need for a reference file system.

Scope

[148] No issues of scope arise.

⁴⁹ Memorandum of counsel for JFP to WRC dated 25 July 2025 at [23].

Direction 6: Nitrogen Risk Score values for permitted activity limits⁵⁰

[149] Direction 6 required WRC to:⁵¹

Review the Nitrogen Risk Score values for permitted activity limits in Table 1 of Schedule B to ensure they represent the best available information

The issue

[150] In Part E18 of the First Interim Decision, we stated we are satisfied that the Nitrogen Risk Scorecard (**NRS**) is currently the most efficient and effective drafting gate for dairy farms with a low risk of diffuse discharges of the primary contaminants in terms of meeting the objectives of PC1. However, we directed WRC to review the NRS values for permitted activity limits in Table 1 of Schedule B to ensure they represent the best currently available information.

WRC's response

[151] In its memorandum dated 4 August, WRC stated that it did not propose to make any changes to the provisions and advised:

WRC has asked Fonterra to confirm whether these thresholds still represent the best available information. In response, Fonterra confirmed that the data provided still represents the best available data for the years that data was provided for. Fonterra further advised that the same methodology would be used to establish an aggregated score for any other years, so using a different year would not deliver better quality data. On this basis, WRC does not propose any updates to the provisions.

Our findings

[152] We find that no changes are required to the provisions.

Scope

[153] No issues of scope arise.

⁵⁰ Refer First Interim Decision, at Part E18 and WRC memorandum dated 4 August 2025, from [80].

⁵¹ First Interim Decision at [1184].

Direction 7: Amend matter of control (iv) in Controlled Activity Rule 3.11.4.4⁵²

[154] Direction 7 required WRC to:⁵³

Amend matter of control iv in Controlled Activity Rule 3.11.4.4 to read “Measures, including measures to address the effects of rainfall, topography, soil and erosion characteristics and/or clean water irrigation, to ~~address the effects, including cumulative effects,~~ ensure that the risks of diffuse discharge of nitrogen, phosphorus, sediment and microbial pathogens will be reduced to be as low as practicable over an appropriate specified period, which generally shall not exceed 10 years of PC1 becoming operative, as determined in accordance with Policy 2.”

The issue

[155] This rule was amended in accordance with our directions to apply to farming activities (other than CVP) with more than a low risk of diffuse discharges. WRC identified the need to amend the matter of control (iv) and independently, the Court directed that it be amended to include the above wording,⁵⁴ which is included in PC1 Final.

Related amendments proposed by WRC

[156] WRC identified other provisions for which similar amendments were required, including Rules 3.11.4.5, 3.11.4.6 and 3.11.4.10.

Our findings

[157] We accept the proposed amendments and find that Direction 7 has been met.

Scope

[158] Controlled Activity Rule 3.11.5.4 in the Notified Version applied to all farming activities with an FEP that were not permitted. This was changed in the

⁵² Refer First Interim Decision, at Part E21, and WRC memorandum dated 4 August 2025, from [86].

⁵³ First Interim Decision at [1184].

⁵⁴ First Interim Decision, at [492].

Decisions Version so that Controlled Activity Rule 3.11.4.4 applied only to moderate intensity farming and Discretionary Activity Rule 3.11.4.7 applied when the NLLR was high. Federated Farmers gave one ground of appeal as “Federated Farmers considers that the controlled activity status ought to also apply to existing high NLLR farms to recognise that they are existing activities”. They sought that Rule 3.11.4.4 be amended to read “Rule 3.11.4.4 – Controlled Activity Rule – Moderate and high intensity farming”. This provides scope to amend Rule 3.11.4.4. The proposed amendments to matter of control are incidental to that amendment and no issues of scope arise.

[159] WRC noted that the Court had proposed the inclusion of clean water irrigation in relevant provisions, subject to scope, and WRC had no objection. It referenced appeal points relating to irrigation in the consultation document attached to its 4 August memorandum. Federated Farmers sought that Schedule D2, Goal 8 be amended as follows: To operate irrigation systems efficiently and ensure that the actual use of water is monitored and efficient in a way that minimises contaminant losses from irrigation to surface water or groundwater. WRC also stated that other appeals, particularly those of Fonterra, DairyNZ and the Waikato and Waipā River Iwi drew attention to the fact that clean water irrigation can exacerbate diffuse discharges to water.

[160] WRC invited parties to comment on the issue of scope. There is no reference to any responses from parties relating to scope in WRC’s memorandum and we are satisfied that no issues of scope arise.

Direction 8: Amendment to Policy 1(e)⁵⁵

[161] Direction 8 required WRC to amend Policy 1(e) to read:⁵⁶

Ensuring that records are kept to demonstrate that the risk of diffuse discharges of nitrogen, phosphorus, sediment and microbial pathogens to water bodies is reduced

⁵⁵ Refer First Interim Decision, at Part E22, and WRC memorandum dated 4 August 2025, from [96].

⁵⁶ First Interim Decision at [1184].

to be as low as practicable within an appropriate specified period, which shall generally not exceed 10 years PM₁₀ becoming operative.

Our evaluation and findings

[162] We are satisfied that PC1 has been amended appropriately and we find that Direction 8 has been met. We are also satisfied that the amendments are generally consistent with other determinations we have made.

[163] We note Mr Pinnell's concern about the requirement to reduce discharges to be as low as practicable within an appropriate specified period but do not accept that means that the risks of discharges must be fully mitigated within that time.⁵⁷ The provision is clear that they are to be reduced to the extent practicable and no amendment is necessary or appropriate.

Scope

[164] No issues of scope arise.

Directions 9 and 10: Revised version of Policy 2(B) and definitions of good management practices⁵⁸

[165] We address these directions together as that is the way they were addressed in WRC's memorandum dated 4 August.

[166] Directions 9 and 10 required WRC to respectively:⁵⁹

Propose a final version of Policy 2(B)

Propose definitions for Good Management Practices (**GMPs**) and circumstances where they may not be adopted in accordance with new Policy 2(B).

⁵⁷ Mr Pinnell response to WRC consultation document dated 27 July 2025 from [2].

⁵⁸ Refer First Interim Decision, at Part E22, and WRC memorandum dated 4 August 2025, from [102].

⁵⁹ First Interim Decision at [1184].

The issues

[167] Direction 9 required WRC to propose a revised version of Policy 2B to provide clearer policy direction on the future management of dairy farming activities with more than a low risk of diffuse discharges. It was clear from the evidence that these activities are the main dischargers of nitrogen in the PC1 area. Their appropriate management will be critical to the success of PC1 and was a key issue throughout the appeals process. It was addressed in some detail in the consultation document, in which WRC summarised 19 matters of relevance to policy direction identified in the First Interim Decision under the heading “Key points from Interim Decision about this matter”.⁶⁰

[168] We also addressed the topic in some detail in Part E22 of the First Interim Decision and note the following as being particularly relevant to our final determination of the Policy:

[499] Policy 2 of the Notified Version required a “tailored approach to reducing diffuse discharges from farming activities” but this is not explicitly stated in subsequent versions. In our view, the wording in the Notified Version provides clarity and should be reinstated unless any party can identify a scope reason for not doing so. The Policy should also be clear that managing the risk of diffuse discharges of the primary contaminants must also consider the current state of the existing receiving environment and the level of degradation that is present. Policy guidance will need to be clear as to how WRC will assess the level of mitigation to be provided as the likelihood of contaminant loss and the level of degradation of the receiving environments increase.

[169] Both the Notified and Decisions Versions were based on a risk-based approach. The Decisions Version introduced a requirement to demonstrate that either the nitrogen loss from a farm “... is already as low as practicable given the current land use” or “will reduce to the lowest practicable level over an appropriate specified period”. We stated in the First Interim Decision:

[504] We consider the use of the word “practicable” should remain in PC1 to ensure there is no misunderstanding that both benefits and costs must be considered. We consider that “as low as practicable” must remain to ensure clarity of expectation, particularly in relation to over-allocated sub-catchments and, in particular, in sub-catchments draining to the Whangamarino Wetland

⁶⁰ Memorandum of counsel for WRC dated 4 August 2025, Annexure A WRC’s Consultation Document from [83].

or in a sub-catchment draining to lakes named in Table 3.11.3 or in a sub-catchment draining to wetlands listed in Table 3.7.7 of the WRP.

[170] We also referred to relevant case law relating to the meaning of “practicable” that could be used to improve clarity of any amended Policy 2.

[171] However, we rejected some parts of the amended policy in the Decisions Version for the following reasons stated in the First Interim Decision:

[535] ... The Policy does not require regard to be had to the sensitivity of the receiving environment which, in our view, is a significant weakening of the policy in the Notified Version and not the most appropriate way to meet the objectives. The requirement to make significant reductions lacks clarity and also is not the most appropriate way to meet the objectives.

[172] We concluded by stating:

[537] We consider Policy 2Bd of the Notified Version encapsulates what must be achieved if an appropriate start is to be made towards achieving the vision and strategy of Te Ture Whaimana. However, it too needs expansion to ensure greater clarity, including what “more” means, for example, which is a matter for WRC. Drawing on WRC’s latest proposed amendments to the policy in its memorandum dated 2 September 2024 and taking into account the evidence, we consider that an amended policy 2(B) specific to dairy farming activities with medium and high risks of diffuse discharges along the lines set out below could be the most appropriate way to achieve the objectives.

...

[551] The above comments reflect our continuing high level of concern that greater clarity and certainty of policy direction is required to enhance the efficiency, effectiveness and equity of PC1. They are made for consideration by WRC and other parties and are not directions, nor intended to unreasonably constrain WRC’s decision-making flexibility. We will direct WRC to propose what it considers to be the most appropriate policy to meet the objectives, and its proposed approach to processing resource consents on an interim basis until more complete information is available, taking into account the matters we have raised and responses from parties.

[173] The role of GMPs and their inclusion in policy direction were significant issues at the time of the Council hearing and through the appeals process, as discussed in the First Interim Decision. By way of background, we stated:

[516] We agree with WRC that all land use activities should be required to adopt GMP. Put another way, it is unclear to us on what basis appropriate GMP would not be adopted. The adoption of GMP should be a pre-requisite

because of the statutory requirement to give effect to Te Ture Whaimana. Accordingly, as provided for in s 290 of the RMA we do not accept that part of the Hearing Panel's decision that GMP are not required in a policy and rule framework.

...

[527] Based on the experience of members of the Court on a number of recent cases involving farming practices, including PC1, industry groups are putting considerable effort into improving environmental performance in their industries. This is not driven only by RMA requirements but also by the sustainability requirements of their markets, which is compelling if their access to the markets is to be retained. In our view, WRC could not define robust GMPs without input from the relevant industries and it would be illogical for PC1 not to require the general adoption of industry developed GMPs where they would contribute to achieving the objectives of PC1. Our reference to "general adoption" recognises that full adoption may not always be possible or necessary or appropriate but should be required to the extent relevant and practicable and where they would contribute to reducing effects on the environment and achieving Te Ture Whaimana.

Substantive responses to the First Interim Decision

[174] In the consultation document, WRC provided a comprehensive analysis of the relevant matters raised in the First Interim Decision before setting out its preliminary proposals for addressing them for consideration by the parties. We acknowledge and compliment WRC on the thoroughness, care taken and well-reasoned response to the matters raised by the Court.

Policy 2B

[175] In relation to Policy 2B, WRC noted in the consultation document attached to its 4 August response:

[101] The Court's suggested policy directions in [539] are designed to respond to the 19 matters summarised above under the heading "Key points from Interim Decision about this matter". WRC understands that overall, the intention of the new policy directions is to provide clearer guidance about how consent requirements for dairy farming are to be determined. WRC generally agrees with the proposed policy directions for dairy farming in [539] but suggests some amendments.

[176] In view of the significance of these matters to the effectiveness of PC1, and the various versions of the rule proposed through the appeals process, we set out WRC's proposed amendments to Policy 2B in PC1 Final, after it had taken into

account comments from parties to the extent it considered appropriate, in full using tracked changes.

Policy 2

- B) Manage other farming activities other than commercial vegetable production, ~~with a Farm Environment Plan prepared in accordance with Policy 4,~~ as follows:
- a. Enabling as permitted activities farming activities with a low risk of diffuse discharges of nitrogen, phosphorus, sediment and microbial pathogens to water, and requiring those activities to:
 - i comply with minimum farming standards in Schedule C; and
 - ii demonstrate through the FEP, in accordance with Policy 4, that either the risk of diffuse discharges to water is already as low as practicable given the current land use or will be reduced to be as low as practicable given the current land use or will be reduced to be as low as practicable within 10 years of Chapter 3.11 becoming operative;
 - b. Requiring ~~drystock and arable~~ farming with a ~~moderate~~ more than a low risk of diffuse discharges of nitrogen, phosphorus, sediment and microbial pathogens to water to:
 - i obtain a resource consent, and to demonstrate through the ~~Farm Environment Plan~~ FEP, in accordance with Policy 4, that:
 - 1 either the risk of diffuse discharges to water is already as low as practicable given the current land use or will be reduced to be as low as practicable over an appropriate specified period; and
 - 2 Generally requiring that either farming is carried out in accordance with good management practices for the current land use or good management practices will be introduced over an appropriate specified period. In determining appropriate good management practices, regard should be had to the guidance provided by the goals and principles in Schedule D2, Part C, and relevant industry developed guidelines on good management practices for farming in New Zealand that are relevant to the Waikato and Waipā River catchments;
 - c. Requiring dairy farming activities with more than a high ~~low~~ risk of diffuse discharges of nitrogen, phosphorus, sediment and microbial pathogens to water to ~~demonstrate through the Farm Environment Plan that, over an appropriate specified period stated in a resource~~

~~consent, the risk to water will be reduced to as low as practicable and to obtain a resource consent and to prepare an FEP in accordance with Policy 4, as follows:~~

- ~~i. Reduce that risk to moderate or low as set out in Schedule B(C) Table 1 and Table 2; or~~
 - ~~ii. Demonstrate that a transition to a different activity with a moderate or low risk will be undertaken; or~~
 - ~~iii. Demonstrate that the Nitrogen Risk Scorecard or the Nitrogen Leaching Loss Rate does not reliably account for the benefits of contaminant mitigation measures that are in place, or would be required to be put in place by any resource consent, that mean that the risk of the activity would be moderate or low if those matters were taken into account; and~~
- i. Generally requiring that either farming is carried out in accordance with good management practices for the current land use or good management practices will be introduced over an appropriate specified period. In determining appropriate good management practices, regard should be had to the guidance provided by the goals and principles in Schedule D2, Part C, and relevant industry developed guidelines on good management practices for farming in New Zealand that are relevant to the Waikato and Waipā River catchments.
 - ii. Taking a tailored, risk-based approach to define any additional actions and mitigations required on the land to reduce the risk of diffuse discharges of nitrogen, phosphorus, sediment and microbial pathogens to be as low as practicable within 10 years.
 - iii. Requiring the degree of reduction in the risk of diffuse discharges of nitrogen, phosphorus, sediment and microbial pathogens to be proportionate to the current risk (those with a higher risk are expected to make greater reductions), and proportionate to the scale of water quality improvement required in the sub-catchment; and
 - iv. Where in accordance with (iii) greater reductions in the risk of diffuse discharges of nitrogen, phosphorus, sediment and microbial pathogens are required, regard shall be had to the extent to which good management practices will achieve the reductions required; address the risks and levels of risk identified in the risk assessment that supported development of the Farm Environment Plan;
 - v. When determining the appropriate additional actions and mitigations required to reflect the scale of water quality improvement required in the sub-catchment, consideration must be given to:
 - whether the farm is within any sub-catchments draining to the Whangamarino Wetland or in a sub-

catchment draining to lakes named in Table 3.11.3 or in a sub-catchment draining to wetlands listed in Table 3.7.7 of the Waikato Regional Plan; and

- the extent to which any sub-catchment is over-allocated for nitrogen in particular based on information to be provided by the Waikato Regional Council on catchment context; and
- generally requiring the additional actions and mitigation in these sub-catchments to be greater than in sub-catchments where the long-term water quality targets in Table 3.11.1 of the Notified Version are met; and

vi. When determining the appropriate additional actions and mitigations required, consideration must be given to any increased site-specific risks of diffuse discharges of nitrogen, phosphorus, sediment and microbial pathogens resulting from:

- soil characteristics that could contribute to higher than average nitrogen leaching risk for the PC1 sub-catchment area generally; and
- annual rainfall above average for the PC1 Waikato and Waipā catchments or sub-catchment area; and
- slope; and
- high erosion potential; and
- the extent and intensity of irrigation; and
- proximity of lakes and wetlands; and

generally requiring the additional mitigation to reflect the increase in risk of diffuse discharges of nitrogen, phosphorus, sediment and microbial pathogens arising under the above headings;

vii. Requiring good management practices and mitigation measures to be recorded in FEP and implemented as soon as practicable and prioritised so that those predicted to be most effective in reducing the risk of diffuse discharges to be set out as a condition of consent and completed within the first five years of the consent, with steady progress over time; and

viii. Requiring a general indication of further actions and mitigation measures needed to ensure the discharges are reduced to be as low as practicable within an appropriate specified period to be set out in the consent and in no case more than 10 years from the grant of consent; and

ix. Recognising that further actions and mitigation measures may or will be required for restoration purposes by future plan changes, which should be considered in longer-term farm planning.

- d. For the purposes of (b) and (c), any relevant resource consent and FEP should have regard to the following when assessing the actual risk of the farm:
- i) The output of any decision support tool used to support determination of risk; and
 - ii) The ability of any decision support tool used to support determination of risk to capture the benefits of existing contaminant mitigation steps that have been put in place; and
 - iii) The ~~relative vulnerability of the land that is most at risk of generating to~~ diffuse discharge of nitrogen, phosphorus, sediment and microbial pathogens to water, as established by ~~an expert analysis~~ a Certified Farm Environment Planner, ~~considering of, among other considerations:~~
 1. The rainfall, topography and soil characteristics of the farm ~~property(s)~~; and
 2. The sensitivity of the receiving environment including the presence of lakes and wetlands and the likelihood of run-off to surface waterways; and
 3. Subject to data availability, the depth of groundwater under the land, the chemical characteristics of that groundwater, the speed that groundwater transmits contaminants to surface waterways and the likely attenuation of nitrate nitrogen between the root zone and any surface waterway; and
 - iv) ~~Whether the farming activities, when compared to most farms in the sub-catchment, are~~ Whether the farming activities, when compared to most farms in the sub-catchment, are making a significant or disproportionate contribution to contaminant loading in the sub-catchment(s) within which the land is located and/or downstream catchments; and
 - v) How it is proposed to reduce the risk of diffuse discharges of nitrogen, phosphorus, sediment and microbial pathogens to water, including how quickly and to what extent it will be reduced; and
- ii. ~~In determining the appropriate specified period, include consideration of the following matters:~~
- ~~• the intention to achieve the interim target attribute states in Table 3.11-1 within 10 years of PC1 becoming operative; and~~
 - ~~• the actions and mitigations that are reasonably practicable to implement, the cost of those actions and mitigations relative to the scale of the farming business, and the appropriateness of spreading costs over time; and~~
 - ~~• the effect of contaminant loss on waterways within the property(s) and sub-catchment, and the risk and effect of deferring contaminant loss reduction; and~~

- 2) ~~Are there actions suggested by the farming standards in Schedule D1 (Part C), the goals and principles in Schedule D2 (Part C) or industry developed guidelines on good management practices for farming in New Zealand that are relevant to the Waikato and Waipā River catchments, that could be undertaken to further reduce risk?~~
- 3) ~~Are there potential actions that would reduce risk that are reasonably available, reasonably feasible or reasonably achievable within the context of the farm?~~
- 4) ~~Are the costs of the actions proportionate to the nature and scale of the farming operation?~~
- 5) ~~Is there reasonable certainty that the actions will be effective in reducing risk of contaminant discharges?~~
- 6) ~~Are the costs and efforts proportionate to the expected benefits in terms of reductions in risk of contaminant discharges?~~

[177] We discuss responses from other parties to the proposed provisions under the next sub-heading.

The September Judicial Telephone Conference and resulting directions

[178] In our pre-conference minute dated 27 August, we stated:

[36] In view of the significance of this policy, we will invite WRC to lead a discussion at the JTC.

[179] On the morning of the JTC, WRC provided a tracked change version of earlier provisions relevant to Directions 9 and 10, which were the subject of feedback by parties at the JTC. Mr Matheson, counsel for Federated Farmers, addressed an issue raised previously by the Court suggesting that “the phrase is already as low as practicable or will be reduced to as low as practicable” should be removed from the provisions.⁶¹

[180] Mr Matheson explained that the phrase:

... is consistent throughout the entire document, and the intention was to make sure that for those contaminants on those farms where the farmers are already at as low as practicable they're not required to further reduce any diffuse discharge, and so that was why the phrase was consistently in the document as either as low as practicable already, or will be reduced to as low

⁶¹ Transcript, from page 32.

as practicable over a period of time. So, that was a deliberate and consistent phraseology throughout the plan.

[181] We considered this to be a significant issue, because the Court's reason for proposing its removal was because of a concern that it could affect compliance with amended s 70 of the RMA, which required a reduction to be achieved. Mr Matheson suggested that the JFP and others could have an initial discussion and report to the Court on a collective basis as to our view of what s 70 allows.

[182] In our post-conference minute dated 15 September we stated:

[35] We note Mr Conway's acknowledgment that WRC would review, update and provide a further version to the Court with a further version of the Policy. He said there is a need to test the Court's suggested changes and that a number of consequential changes to provisions are expected. WRC is to seek comment from other parties on the amended version and advise the Court of a date by which it will be provided to the Court.

[183] We also addressed the following concerns expressed by parties relating to WRC's substantive response discussed above and suggested ways to address them for consideration by WRC.

[184] WPL opposed WRC's following proposed amendment to Policy 2B(d)(i):⁶²

Whether the farming activities, due to their size, intensity or management compared to most farms, are making a significant or disproportionate contribution to contaminant loading in the sub-catchment(s) within which the land is located and/or downstream catchments;

[185] The Waikato and Waipā River Iwi and CNI questioned what was meant by "compared to most farms" in WRC's proposed amendment to Policy B(2)(d)(i) as the comparison to be made was unclear as drafted. They suggested that "compared to most farms within the sub-catchment" would make more sense and we agreed.

[186] Mr Pinnell had expressed concern at the requirement in Policy 2B(d)(i) that the relative vulnerability of the land to diffuse discharges be established by an expert

⁶² Memorandum of counsel for WPL dated 25 July 2025 at [16]-[19].

analysis. He also considered that then Policy 2B(i)(3) being proposed by WRC lacked clarity relating to the timeframes for implementing actions.⁶³

[187] The JFP submitted that:⁶⁴

Policy 2(B) is one of the key policies in PC1. It is at the heart of the controls on farming and it has been the subject of years of mediation, evidence and determinations in the Interim Decision. The Joint Farming Parties would be very concerned if there was any suggestion that Policy 2(B)(c) could now apply to drystock farming. ...

[188] It is clear on its face that Policy 2B(c) applies only to dairy farming with more than a low risk of diffuse discharges but not to drystock or CVP.

WRC's further proposals and parties' responses (included in Appendix C of WRC's 31 October memorandum)

[189] In the consultation document attached to its memorandum dated 31 October, WRC addressed use of the phrase "already as low as practicable" in relation to Direction 2: Sections 70 and 107 of the RMA. That was appropriate as the Court's concern related to compliance with s 70. WRC stated in the memorandum:

[31] WRC has considered the responses from the parties. It confirms its general preference to retain the words "already as low as practicable". This allows acknowledgement of exemplary farmers and does not seek to discourage action beyond expectations or advancing time frames.

[190] In their response dated 24 October to the consultation document, the JFP stated:

[4] The Joint Farming Parties' main concern was about how the phrase "already as low as practicable" is used in in Schedule D1 Part C2(a), and the implications if it was deleted. Their concern was that exemplar farms, who have already implemented mitigations to reduce diffuse discharges to as low as practicable, would be required to continue to show reductions at each and every five yearly review of the farm plan. This seems to beyond the original intention of PC1 (being the first stage of an 80-year journey) and would not

⁶³ Mr Pinnell memorandum dated 15 August 2025, at [70] and [58] respectively.

⁶⁴ Memorandum of counsel for JFP dated 18 August 2025 at [11].

recognise those farmers which “went above and beyond” long before there was a legal obligation to mitigate effects.

[5] Further, the Joint Farming Parties do not read s 70(3) as requiring permitted activity rules to be worded in such a way as to require each activity to show ongoing reductions in every contaminant associated with the activity. Instead, the council has to be satisfied that the standards will contribute to a reduction in effects in the receiving waterbody.

[191] Fish and Game’s response dated 24 October stated:

[50] ...

(a) Fish & Game does not consider WRC can be satisfied there will be a reduction in effects within 10 years of PC1 becoming operative with the changes proposed to Policy 2(B).

[192] WPL indicated it had concerns about the inclusion of the words “when compared to most farms in the sub-catchment” in Policy 2B(d)(iv). It referred to paragraph 19 of its Notice of Appeal: “It is beyond an applicant’s control to provide a comparison of its activity with others, be that in the sub-catchment or elsewhere.” WPL considered that the remainder of Policy 2 and the new Policy 3A adequately cover all relevant matters such that this problematic comparison is not required.

Our evaluation and findings

[193] We accept the submission made by the JFP in their paragraph [5] above and agree with retention of the phrase “already as low as practicable” based on WRC’s response to Direction 2.

[194] We addressed the concern raised by Fish and Game in the Second Interim Decision and we are satisfied that there will be a reduction in effects within 10 years.

[195] Mr Pinnell’s concern that the relative vulnerability of the land to diffuse discharges be established by an expert analysis in Policy 2B(d)(i) has been addressed in PC1 Final by requiring it to be established by CFEP, not an expert analysis.

[196] We considered WPL’s concern relating to the words “when compared to most farms in the sub-catchment” in Policy 2B(d)(iv) and also in relation to the

words “size, intensity or management”. In our view, there would likely be more factors than size, intensity or management which could contribute to whether a farming activity is making a significant or disproportionate contribution to contaminant loading in a sub-catchment. The nitrogen risk assessment and biophysical characteristics of the farm could be examples. Clearly, when comparing a dairy farming activity with others in the sub-catchment, stocking rates and total stock numbers will be relevant but an overall judgement will be unavoidable until a much more complete catchment context is available.

[197] While we accept that individual farmers will be unable to provide a definitive comparison with other farms in the sub-catchment, we would expect them to know if their activities were at a level of intensity at which increased scrutiny could be required. We would also expect WRC to have a sufficient understanding of farming activities in the sub-catchment to know when it was necessary to have regard to Policy 2B(d)(iv) in relation to individual farms.

[198] Taking into account the suggestion made by the Waikato and Waipā River Iwi and CNI, we consider that the addition of the words “compared to most farms in the sub-catchment” is a pragmatic way to provide greater clarity and certainty. We are satisfied that the provision is appropriate as one element that needs to be considered within the context of ensuring that the provisions, collectively, are the most appropriate to meet the objectives of PC1 and Te Ture Whaimana. However, any comparison should not be constrained by defining factors to be considered. It appears to us that WRC’s guidelines for use by farmers, their advisors, CFEP and Consent Officers should include this topic.

[199] We are satisfied, based on WRC’s responses to the concerns raised by other parties, that they have been addressed appropriately in the amended policy in PC1 Final.

[200] We find that Direction 9 has been met.

[201] In relation to Direction 10, we accept WRC’s proposal for determining appropriate good management practices and the addition to Method 3.11.3.5 (a).

We accept that WRC has not found a suitable definition sufficient to clearly indicate what is a good management practice and what is not and we find that Direction 10 has been addressed appropriately.⁶⁵

Scope

[202] Eight appeals were lodged in relation to Policy 2 of the Decisions Version.⁶⁶ All sought either the deletion of parts or all of Policy 2 or the provision of greater clarity. By way of examples:

- (a) Landcorp Farming sought:

Clearer specific guidance and definition of terms is required throughout the policy, or remove Policy 2 in its entirety.

- (b) Federated Farmers sought:

Amend the policy guidance for the preparation of FEPs (provided in Policy 2 and elsewhere in PC1) so that it is clear, consistent, reasonable and practicable.

- (c) Fonterra and Dairy NZ sought that:

The tests of 'reduce to the lowest practicable level' and 'significant reduction' need to be developed further within the policy to provide greater clarity about the matters that will be relevant to consider, and the likely magnitude of the leaching reduction that will be considered appropriate under each test.

- (d) Fish and Game sought:

delete the phrases 'lowest practicable', 'significant reduction' and 'appropriate transition' and provide clear interpretation of those phrases consistent with controlling farming to achieve water quality goals

⁶⁵ Memorandum of counsel for WRC dated 4 August 2025 at [115](a).

⁶⁶ Fonterra, Dairy NZ, Forest and Bird, WPL, the Waikato and Waipā River Iwi, Fish and Game, Federated Farmers and Landcorp Farming

[203] Both individually and collectively, these provide scope for the proposed amendments included in PC1 Final.

[204] The requirement to reduce discharges of the primary contaminants to the lowest practicable level over an appropriate specified period unless they are already as low as practicable given the current land use was determined to be appropriate by the Council Hearing Panel. We agree with the Panel's findings. It improves clarity as sought in a number of appeals and we are satisfied that it is the most appropriate way to achieve the objectives of PC1 in accordance with s 32AA and to make progress towards achieving Te Ture Whaimana.

[205] The specified period will be no greater than the term of PC 1 or the term of resource consents granted and, for most farms with more than a low risk of diffuse discharges of the primary contaminants in sensitive sub-catchments, will be in the order of 10 years. The provision may also be relevant to the application of s 107(2A) and in our view is the most appropriate way to achieve the purpose of the RMA.

[206] The background and explanation section of the Notified Version stated that the approach to reducing contaminant losses from pastoral farmland implemented by Chapter 3.11 requires FEPs (including those for commercial vegetable producers) that ensure industry-specific good management practice and identify additional mitigation actions to reduce diffuse discharges by specified dates, which can then be monitored. The inclusion of Policy 2B(b)(i)(2) formalises that intention and requires the use of Good Management Practices, including relevant industry guidelines.

[207] The version of Policy 2 in PC1 Final reinstates the requirements of the Notified Version to take a "tailored approach to reducing diffuse discharges from farming activities" and must consider the current state of the existing receiving environment and the level of degradation that is present. We consider that both of these and the requirement to implement good management practices are essential components of the plan provisions and form part of the most appropriate way to

achieve the objectives of PC1. We considered the Council Decision in accordance with s 290A of the RMA and disagree with the Panel's decision to remove them.

[208] The rest of proposed Policy 2 in PC1 Final provides clarity as to how compliance with the relevant provisions will be determined to ensure certainty, workability, practicability, enforceability and equitability in accordance with principle (b) set out in the First Interim Decision.⁶⁷ Overall, we are satisfied that the appeals provide scope for the proposed amendments to Policy 2 and that the amended version is the most appropriate to achieve the objectives.

Direction 11: Possible non-regulatory role for Nitrogen Risk Scorecards

[209] Direction 11 required WRC to:⁶⁸

Consider whether provision should be made to include the NRS in any form of non-regulatory role as a possible way to test its suitability for use in a future regulatory role or plan change, for example for annual review purposes

The issue

[210] In addition to the use of nitrogen risk scorecards in PC1, they are being considered for use in regulation elsewhere in New Zealand, as discussed in Part E17 of the First Interim Decision. We are satisfied that the NRS is currently the most efficient and effective drafting gate for dairy farms with a low risk of diffuse discharges of the primary contaminants in terms of meeting the objectives of PC1 based on the particular circumstances that exist in the PC1 area and the alternatives available. However, for the reasons set out in paragraph [480] of that Interim Decision, it would be premature to use nitrogen risk scores as proposed in PC1 at one time as the primary regulatory tool for differentiating between and/or managing medium and high intensity dairy farming activities with their corresponding increased risks of diffuse discharges, or for use for drystock farms or CVP activities

⁶⁷ At [319].

⁶⁸ First Interim Decision at [1184].

unless approved by WRC's Chief Executive in accordance with Schedule B(C) amended in accordance with this decision.

WRC's substantive response

[211] WRC agreed that it should further investigate the usefulness of nitrogen loss risk tools such as the NRS, Overseer, any risk tools used for CVP and perhaps any eventual use of the MfE risk tool. WRC proposed the following clause be added to method 3.11.3.5: Support research and dissemination of best practice guidelines to reduce diffuse discharges to support this:⁶⁹

Collate farm-scale biophysical and nitrogen budget data provided by farmers to support research which improves understanding of the relationship between changes in nitrogen loss risk and both predicted and observed catchment water quality outcomes, and to better enable testing of the suitability of nitrogen loss risk tools for use in future plan change processes.

Our findings

[212] We agree with the proposed addition and find that Direction 11 has been addressed appropriately.

Scope

[213] The proposed amendment relates to the collation of information by WRC to assist future planning and no party will be adversely affected. No party raised an issue of scope and we do not consider there is one.

Direction 12: Amendments to Permitted Activity Rule 3.11.4.3

[214] Direction 12 required WRC to:⁷⁰

Amend Permitted Activity Rule 3.11.4.3 to include a condition that diffuse discharge risk must reduce to be as low as practicable within an appropriate specified period not exceeding 10 years or is already as low as practicable

⁶⁹ Memorandum of counsel for WRC dated 4 August 2025 at [117].

⁷⁰ First Interim Decision at [1184].

The issue

[215] This direction was included in anticipation of the stated intention to amend s 70 of the RMA and included the following footnote:

Memorandum of WRC dated 5 April 2024: WRC and Federated Farmers agreed to amend Schedule D1, Part C(2)(a), which applies to permitted activities to require demonstration that diffuse discharge risk is reducing over time or is already as low as practicable.

Substantive responses to the First Interim Decision

[216] WRC noted in the consultation document⁷¹ that it agreed with the intent of the direction but identified that it lacked the necessary certainty for a permitted activity rule and proposed an alternative approach. It considered that the direction that permitted farmers should reduce risk to as low as practicable over time is one that should be included in Policy 2B(a). It suggested that Policy 2B(a) be amended as follows:

[143] ... Enabling as permitted activities farming activities with a low risk of diffuse discharges of nitrogen, phosphorus, sediment and microbial pathogens to water, and require those activities to comply with minimum farming standards, and to demonstrate through the Farm Environment Plan that either the risk of diffuse discharges to water is already as low as practicable given the current land use or will be reduced to be as low as practicable within 10 years of PC1 becoming operative.

[144] Given that this policy applies to permitted farming activities, it will be implemented through the proposed amendments to Schedule D1, Part D(2)(a), ...

[217] WRC recorded in its 4 August memorandum that the Waikato and Waipā River Iwi and CNI supported the amendments to Policy 2B(a). WRC also recorded in the memorandum that:

[126] ...

(a) Mr Pinnell stated in response to WRC's amendment to Policy 2(B)(a) that the change requires all farms that qualify for permitted activity status under the gateway rules to fully implement all practicable mitigations within 10 years or obtain a controlled activity consent. ...

⁷¹ Memorandum of counsel for WRC dated 4 August, at Annexure A.

[127] ... the term “practicable” would include consideration of the timeframes within which actions are to be undertaken.

[218] In Mr Pinnell’s 15 August memorandum to the Court in relation to WRC’s paragraph [127], he stated:⁷²

[60] This still leaves the issue that I previously raised. Farmers are likely to be confused if what is practicable depends on the timeframe rather than what is ultimately practicable given sufficient time. ...

[219] He raised the issue at the September JTC, stating that “... at the very least this policy needs to clarify that timeframes are part of the assessment of practicable”.⁷³

[220] In our post-conference minute dated 15 September, we directed under the heading “Direction 12 – Definition of “practicable” that:

[37] WRC is to review the definition in discussion with Mr Pinnell. We note that the Act includes a definition of *best practicable option* in the interpretation section 2. Our preliminary view is that any definition of *practicable* in PC1 should be consistent with how that statutory definition addresses practicability.

WRC’s further proposals and parties’ responses

[221] WRC’s further proposals were discussed from paragraph [16] of the consultation document dated 17 October attached to its 31 October memorandum. After setting out the alternatives it had considered and discussed the options with Mr Pinnell as directed, proposed a new definition of “minimise” in PC1 Final “for the purposes of Chapter 3.11, means reduce to the lowest ~~smallest~~ amount practicable”. It also proposed to delete Policies 2B(d)(ii), 2B(i) and 3(d)(ii) and replace them with a new Policy 3A to reduce duplication and improve clarity. This is proposed in PC1 Final as follows:

Policy 3A/Te Kaupapa Here 4:

- a. When determining the extent to which a farm or land used for commercial vegetation has reduced, or will reduce, the risk of diffuse discharges of

⁷² At second paragraph [60].

⁷³ Transcript, at page 39.

nitrogen, phosphorus, sediment and microbial pathogens to water to as low as practicable, the following matters should be considered:

- i. Are there obvious sources of discharge of contaminants to water on the farm that have not been remedied or mitigated?
 - ii. Are there actions and mitigations suggested by the farming standards in Schedule D1 (Part D), the goals and principles in Schedule D2 (Part D) or industry developed guidelines on good management practices for farming in New Zealand that are relevant to the Waikato and Waipā River catchments, that could be undertaken to further reduce risk?
 - iii. Are the actions and mitigations, reasonably available, reasonably feasible and reasonably achievable within 10 years of Chapter 3.11 becoming operative and within the context of the farm?
 - v. Is there reasonable certainty that the actions and mitigations will be effective in reducing risk of contaminant discharges?
 - vi. Are the actions and mitigations affordable, and are the costs and efforts proportionate to the expected benefits in terms of reductions in risk of contaminant discharges?
- b. When determining the appropriate specified period, the following matters should be considered:
- i. The intention to achieve the interim target attribute states in Table 3.11-1 within 10 years of Chapter 3.11 becoming operative; and
 - ii. what actions and mitigations are reasonably practicable to implement, the affordability of those actions and mitigations, relative to the nature and scale of the farm; and
 - iii. the effect of contaminant loss on waterbodies within the farm or land used for commercial vegetable production and sub-catchment, and the risk and effect of deferring contaminant loss reduction; and
 - iv. the scale of any past investment by the farmer in contaminant loss actions and mitigations; and
 - v. where appropriate specified period is being considered in the context of specific actions and mitigations, prioritising those actions and mitigations in a way that seeks to optimise environmental benefits.

[222] WRC summarised the responses from other parties and we also undertook our own review of them and address them in our evaluation and findings.

Our evaluation and findings

[223] The JFP supported the concept of moving Policy 2B(i) to a new Policy 3A and the Director-General preferred the concept to the alternative of providing a definition of “practicable”. Other parties raised no fundamental disagreement with WRC’s proposal to consolidate provisions relating to the determination of the extent to which the risk of diffuse discharges of the primary contaminants to water is reduced to as low as practicable in new Policy 3A(a).

[224] Both the Director-General and Fish and Game expressed concern about the inclusion of “affordability” in the new Policy but acknowledged that costs/financial implications need to be considered. “Affordability” is clearly important as we discussed in the First Interim Decision, but it was not a criterion in the Notified Version, the Decisions Version or in any of the provisions in the 4 August 2025 version of PC1 that Policy 3A replaces. The Director-General considered the inclusion of “affordability” to be unnecessary and in our view, rewording Policy 3A(a)(vi) as follows will achieve the required outcome without the need to refer to “affordability” and open further debate on what it means for each farm:

~~Are the actions and mitigations affordable, and are the costs and efforts of the actions and mitigation affordable-reasonable and proportionate to the expected benefits in terms of reductions in risk of contaminant discharges?~~

[225] We direct WRC to remove reference to “affordability” and amend Policy 3A(a)(iv) broadly as suggested and to remove the words “and the affordability of those actions and mitigations” from Policy 3A(b)(ii).

[226] While the JFP expressed strong reservations about defining “as low as practicable”, the proposed Policy does not do that, it sets out criteria to be considered. They also expressed strong reservations about changing definitions at this late stage of the process. We consider the proposed amended definition of “minimise” is appropriate. The provisions require the risk of diffuse discharges to be reduced to as low as practicable, not to the smallest amount practicable, as the existing definition of minimise. The proposed amendment improves clarity by

removing unnecessary confusion and reflects the outcome the provisions are intended to achieve.

[227] In conclusion on this Direction, we note and agree with the following paragraph in WRC’s memorandum dated 31 October:

[56] WRC considers that, at a conceptual level, what is practicable involves a two-step process. First, what is *possible* needs to be identified, and second, that list needs to be weighed against what is reasonable to expect. ...

[228] This is consistent with our discussion on practicability in the Second Interim Decision, which included:

[52] In our view, the word “reasonable” is implicit in what is “practicable”, with the latter conditioned by the former. We consider that when determining what is practicable, it will be necessary for WRC approved certifiers of FEPs to undertake an assessment of each farm and it will be important that WRC provides clear guidelines as to how this is to be done so that farmers, their advisors, certifiers and Council Officers have a common understanding of what is required.

[53] This will require consideration of what is reasonably able to be done to reduce the risk of incidental discharges of the primary contaminants and reduce the risk of the s 70 effects occurring, taking into account “money, time or trouble” in accordance with the decision of the Court in *Royal Forest and Bird Protection Society of New Zealand v Whakatāne District Council*. Within that framework, the timing of mitigations should be sequenced to prioritise those that will contribute most to reducing degradation in the particular circumstances that exist in the sub-catchment. The guidelines will need to be as clear on their face, certain, workable, practicable, enforceable and as equitable as possible.

[229] We find that Direction 12 has been met, subject to amending Policy 3A(a)(vi) as directed.

Scope

[230] WRC stated in its memorandum dated 4 August:

[145] WRC considers that there is scope for this change to Policy 2(B)(a) and to the change discussed below to Standard 2(a) in Part C of Schedule D1 to bring in the requirement to reduce risk of diffuse discharges to as low as practicable. WRC considers that these changes are consistent with the Waikato and Waipā River Iwi appeals with respect to Schedule D1 and Rule 3.11.4.3.

[231] Consequently, we accept that there is scope to include the proposed amendments.

Direction 13: Demonstrating a reduction in contaminant losses from permitted drystock farms

[232] Direction 13 stated:⁷⁴

A consistent method of demonstrating a reduction in contaminant losses from permitted drystock farms should be included in PC1 to avoid unreasonable levels of discretion having to be exercised by individual regulatory staff (Part F8). WRC is to confirm that Overseer will be used to monitor nitrogen losses from consented drystock farming activities.

The issue

[233] PC1 was notified on the basis that all farms, including drystock, would be managed using Overseer, which would have enabled changes in nitrogen (and phosphorus) losses to be monitored. The Decisions Version introduced an amendment to make drystock farms permitted if their winter stocking rate is equal to or less than 18 stock units per hectare and there was no longer a defined method for demonstrating a reduction in contaminant losses from these farms. Activities that were not permitted were still required to produce a Nitrogen Leaching Loss Rate (**NLLR**) using Overseer.⁷⁵

[234] The need for equity in the way different farming and growing sectors are managed by PC1 was a key issue through the appeals process and provisions relating to each of them were addressed in considerable detail in the Interim Decision. In Part F8 of the First Interim Decision, “Ensuring different farming sectors are treated equitably”, we stated:

[622] By way of a preliminary observation, the Notified Version treated all sectors the same, requiring most activities to produce an NRP, and to reduce diffuse discharges either by 10% in the case of nitrogen for CVP or, in the cases of dairy and drystock farms, proportionate to the amount of current discharge (those discharging more are expected to make greater reductions), and proportionate to the scale of water quality improvement required in the

⁷⁴ First Interim Decision at [1184].

⁷⁵ Schedule B (A) and Rule 3.11.4.4.

sub-catchment. The Decisions Version introduced changes that mean there is no longer a consistent approach to managing dairy and drystock farms and WRC's Final proposal [at that time] is silent on a method to be used for managing CVP activities.

...

[624] ... Of particular note is that the Notified and Decisions Versions of PC1 used nitrogen as the basis for setting consent activity status, without requiring the same level of control on the three other primary contaminants that may in some cases have similar or greater effects on the environment than nitrogen. This gave rise to an element of tension at times through the hearing process between the dairy and drystock sectors and, along with CVP, each sector sought to ensure they were not unfairly disadvantaged compared to each other and that they are all treated equitably.

[235] It is clear from submissions received in relation to Direction 13 that this remained an issue of significant concern to some parties and we took this into account in our evaluation. Direction 18 addressed the relevant provisions for CVP.

[236] A related direction of relevance to both CVP and drystock was to reinstate clause A3(a) of Schedule B to allow alternatives to Overseer to be used to demonstrate a reduction in contaminant loads, not as a gateway. We address Directions 18 and 27 below but refer to them in relation to Direction 13 in this section, where relevant.

[237] The emergence of nitrogen management from drystock farms arose as a significant issue in dispute only after we had issued the First Interim Decision and subsequently required us to consider a wide range of related matters, including scope. As for all of our evaluations, we focussed on the need for certainty, workability, practicability, enforceability and equitability in accordance with principle (b) set out in the First Interim Decision.⁷⁶

Possible use of NRS for other farming sectors in the future

[238] As use of nitrogen risk scorecards is proposed as part of the method, we address their proposed use before considering the method as whole.

⁷⁶ At [319].

[239] The Court has not approved the use of a NRS in PC1 as an alternative to Overseer for regulatory purposes for anything other than dairy farms with a low risk of diffuse discharges. This was to act as a gateway to differentiate between dairy farming activities with a low risk of diffuse discharges and those with more than a low risk. For the avoidance of doubt, we were not in a position to do so, based on the very limited evidence before us on the appropriateness of their use for drystock farms (or CVP). As stated in the First Interim Decision, we were aware that a NRS for CVP was being trialled, but it was not proposed as a tool to be used in PC1. Similarly, an early draft of a NRS for drystock was put before us but was insufficiently advanced in its development to be considered for use in PC1.⁷⁷ That does not necessarily preclude their use, subject to appropriate checks and balances.

[240] We accept that the underlying intent of such scorecards has merit and, while currently untested for use as a gateway in regulatory processes, they may well become viable as alternatives in the future. It is important to be clear that use of the NRS now proposed in PC1 for both drystock and CVP is not as an alternative to Overseer in a regulatory role to determine consent activity status, but as a tool to assist in understanding, assessing and managing the risk of diffuse discharges. It is in that context that we consider its use in response to Directions 13 and separately in relation to Direction 18.

[241] On the basis that we have accepted Overseer has particular limitations for use with CVP and drystock farms, we approve the use of NRS as proposed in PC1, subject to the following conditions:

- (a) Their use satisfies Schedule B(C) amended as discussed below and under Direction 27.
- (b) That templates are prepared and certified as fit for purpose by at least two suitably qualified experts with relevant and extensive sector experience.

⁷⁷ At [419].

- (c) That a single template is used for all CVP activities and a different single template is used for all drystock activities in the PC1 area.
- (d) That the template is approved for use by HortNZ in the case of CVP and that the template for drystock activities is approved for use by relevant industry bodies.
- (e) That each template is independently audited by a suitably qualified and experienced nutrient loss modeller with relevant sector experience and approved as such by the Chief Executive of WRC in accordance with Schedule D4, with the audit findings reported to the Chief Executive.
- (f) All participating experts must objectively assess the extent to which the method provides a reasonable approximation of the extent by which nitrogen losses reduce.
- (g) The final determination must be made by the Chief Executive after consideration of evidence in the audit report.

[242] The above requirements must be incorporated into Schedule B(C) and will apply to NRS used for both drystock and CVP. In addition, for any NRS proposed as an alternative to Overseer for regulatory purposes, appropriate provision must be made for biophysical variations across the PC1 area, in particular soil types and rainfall.

[243] The reference to nitrogen risk scorecard in the proposed amendment to Schedule B(2)(4)(b) must be qualified so that its use for anything other than for dairy farms with a low risk of diffuse discharges must have been approved by the Chief Executive.

Substantive responses to the First Interim Decision

[244] WRC confirmed that, “after considering responses from parties” that Overseer will be used to monitor nitrogen losses from consented drystock farming activities.⁷⁸ In addition to responses to WRC, some parties made submissions direct to the Court by separate memoranda, providing wide-ranging views relating to Direction 13. We summarise key points below.

[245] The JFP⁷⁹ sought that FEPs be used to confirm that consented drystock farms are reducing contaminants over time, not Overseer. They considered that the farm plan requirements, and compliance with the farm plan as a condition of consent, would be a more appropriate mechanism for satisfying s 107(2A) for drystock farms.

[246] The JFP stated that the CFEP will be required to confirm that the proposed mitigations will result in a reduction in contaminants over the duration of the consent, with this being achieved by amending Schedule D2, Part E(1) by adding the following words after “recognise the requirements of”:

[48](a)(i) ...and in particular to certify that the actions will result in a reduction in diffuse discharges of nitrogen, phosphorus, sediment and microbial pathogens.

[247] They considered that:

[48](a)(ii) This is consistent with, and would ensure certification is directly required to address, the purpose of the farm plan i.e. to identify and record time bound actions and mitigations to reduce diffuse discharges of the four contaminants (Schedule D2, Part B(2)(a)).

[248] They supported:

[49] WRC’s proposal to rely on the actions and mitigations in farm plans, and recertification of farm plans to demonstrate that permitted activities are reducing their contaminant losses over time (unless they are already as low as practicable). We consider that the account (at time of recertification) of

⁷⁸ Memorandum of counsel for WRC dated 4 August, from [130], and Annexure 1, at [146].

⁷⁹ Joint memorandum of JFP to WRC dated 25 July, from [41].

the farm plan actions completed, to reduce the diffuse discharges of the four contaminants, will be really important for demonstrating that (Schedule D1, Part E(2)).

[249] The JFP's concerns relating to the use of Overseer for drystock farms included that while dairy farms tend to operate reasonably consistently, drystock farms fluctuate in inputs and outputs according to climatic and economic conditions and stocking rates during any season reflect the amount of grass able to be grown. We stated in the First Interim Decision, that:

[637] With regard to the concern about lack of controls on intensification of drystock farms, we accept that some flexibility for stock movement up and down is required for effective operation of drystock farms.

[250] The JFP also noted that Overseer is a proxy for nitrogen only and for drystock farms, sediment or other non-nitrogen contaminants might be a priority. This was a further issue addressed in the First Interim Decision, in which we recorded:

[78] While dairy farming contributes more nitrogen than drystock in the PC1 area, drystock contributes more diffuse phosphorus and approximately 66% of the sediment overall and between 69% and 80% in the high sediment yielding catchments compared to 21% from dairy, based on long-term soil erosion data. The different ways in which PC1 treats nitrogen and sediment was a matter of dispute and, in our view, requires further attention in the final plan change

[251] The JFP expanded on their concerns in their memorandum dated 18 August to the Court, including the following, which is consistent with Federated Farmers' appeal relating to Policy 4:

[13](a)(i) The Joint Farming Parties oppose a regulatory requirement for consented drystock farms to prepare a nitrogen leaching risk analysis (which requires the use of Overseer) at the time of consent and at 5 yearly intervals. They say that the farm plan should instead be used to require and demonstrate reductions in diffuse discharges. This would not preclude the use of Overseer to inform the development of the farm plan.

[252] WRC recorded in its memorandum dated 4 August that Mr Pinnell did not support Overseer use for drystock farming and had stated:

[135](j) ... Overseer data collection is an administrative burden, information in FEP action plans would sufficiently indicate reductions in nitrogen loss, generally drystock farms have low nitrogen loss, drystock farmers use low amounts of nitrogen fertiliser, purchased nitrogen surplus (**PNS**) should be used instead of Overseer to indicate nitrogen loss risk.

[253] In his 27 July 2025 response to WRC relating to Direction 13, he explained his concerns about using Overseer for drystock farming and his reasons for proposing Purchased Nitrogen Surplus (**PNS**) as an alternative in some detail. In his subsequent memorandum dated 15 August to the Court, Mr Pinnell expanded on his concerns, stating:

[6] The latest revelations by WRC of their intent and the strengthening of the proposals are in our opinion a step too far and have the real potential to cause a flare-up of farmer opposition with a potential to de-rail a successful roll-out of PC1. ...

...

[34] The use of Overseer to monitor nitrogen losses from consented drystock farms is using a sledgehammer to crack a nut.

[35] The benefits of using Overseer as claimed by WRC can equally be provided by the much simpler and cheaper to use Purchased Nitrogen Surplus (PNS) metric.

[36] WRC has not explained their claim that PNS is a coarse measure compared with Overseer when applied in the context of measuring trends over time within a farm. Biophysical factors remain constant in this application, making PNS a very good measure.

The September Judicial Telephone Conference and resulting directions

[254] In our pre-conference minute dated 27 August, we stated:

[47] Having considered the responses from the JFPs in particular, we accept that in the same way that we accepted that Overseer had limitations for use with CVP activities, Overseer has limitations for use with drystock activities.

[48] This will require discussion at the JTC, but we anticipate that WRC may need to work with farming parties to propose a method that relies on FEPs to monitor nitrogen loss risk that is as consistent as possible with the method we have accepted for CVP in accordance with Direction 18. We will also direct WRC to respond to Mr Pinnell's propositions and either include an appropriate clause in the method or provide reasons why that would not be appropriate.

[255] At the conference, Mr Conway, counsel for WRC, stated:⁸⁰

Now turning to direction 13, that related to the question of whether it's Overseer or something else that seems to monitor nitrogen losses from consented dry stock farming activities. Nitrogen surplus has been raised as a possibility, as one way of doing that. The council's concern about that is nitrogen surplus is a cruder mechanism than Overseer and it doesn't take into account many parameters and biophysical elements, and so it does provide one component of the input and to provide a bit of a tool to inform decision-making using generic indices, but due to the limitations of it farmers would have fewer mitigations that could influence outputs if that was really what the focus was, and so the council is reluctant to use nitrogen surplus as an alternative to Overseer in terms of monitoring nitrogen losses from consented dry stock farming activities.

... but at this point there seem to be some pretty good reasons [for] using Overseer as the primary method.

[256] WRC, Mr Matheson for the JFP and Mr Pinnell expressed a willingness to continue discussions.

[257] Ms Ongley advised that Fish and Game supported WRC's view that the PNS has deficiencies, for example if the animals are relying on winter crops, so just supporting Overseer as being the best tool available.

[258] In our post conference minute dated 15 September, we outlined our further consideration of the number of relevant issues and redirected WRC:

[43] ... to work with farming parties to propose a method that relies on farm environment plans (**FEPs**) to monitor nitrogen loss risk from drystock farming that is as consistent as possible with the method proposed for CVP. Overall, we remain of the view that it is appropriate to consider if there is a more appropriate tool than Overseer for use in drystock farming. Any alternative put forward will need to demonstrate this is the case. ...

[44] When proposing an alternative, we draw attention to paragraph [75] of our August minute where we stated that HortNZ's suggestion that its CVP Nitrogen Risk Scorecard is an accepted alternative approved model appears to be premature when the Court has not received sufficient evidence to make such a determination. Similarly, we have no evidence to make any such determination in relation to a drystock farming NRS.

⁸⁰ Transcript, at page 35.

WRC's further proposals and parties' responses*WRC memorandum dated 31 October*

[259] WRC's initial response in this memorandum referred to proposals included in a consultation document dated 17 October provided to parties for comment. In that document, WRC stated:

[28] WRC remains of the view that Overseer is a viable, adequately accurate, and useful tool for assessing N loss from consented drystock farming activities. However, following further discussions and the Direction of the Court, WRC and the farming parties have identified an opportunity for records to be kept and evidence shown for nitrogen loss risk reduction, noting that many of the FEP actions will result in reductions in other contaminants. This would involve changes to policies, rules and schedules to reduce the emphasis on Overseer as the tool for nitrogen leaching risk analysis for drystock farming, and instead moving to a certified FEP model. WRC notes that these are two quite different approaches and the outputs are different – the FEP approach should not be seen as a direct replacement for the use of Overseer and other decision-support tools.

[260] Comments dated 24 October were received from Fonterra and Dairy NZ, Fish and Game, Mr Pinnell, the JFP and WPL were included with the memorandum. WRC sent out further details of its proposed approach to those parties on 29 October and sought a reply “ideally today or tomorrow”. The approach was to include additional criteria for a Nitrogen Leaching Risk Analysis in Schedule B(2), where FEPs are relied on, and is set out in the memorandum. WRC stated in its memorandum that it had received further email comments in response from those parties on 29 and 30 October but required time to consider them and was not in a position to state its final proposal until the comments have been considered further.

WRC memorandum dated 17 November

[261] This memorandum set out WRC's final proposals and included copies of the further responses referred to above.

[262] PC1 Final, includes the following additional criteria in Schedule B(B):

- B2 Where a FEP is to be used, the nitrogen leaching risk analysis shall be undertaken and records kept as follows:
1. The nitrogen leaching risk analysis shall be certified by a Certified Farm Environment Planner for the full farm year, 1 July to 30 June, immediately prior to the date when the consent is required, as determined by Table 3.11-2, and for subsequent years as specified in a resource consent.
 2. Based on the information in 4 and 5 below, the Certified Farm Environment Planner must certify that the risk of nitrogen losses from the farm, over time, is:
 - a. becoming greater; or
 - b. unchanged; or
 - c. decreasing; or
 - d. not able to be ascertained, in which case this Schedule B(B2) method of nitrogen leaching risk analysis cannot be used and Schedule B(B1) or B(C) must be used.
 3. The nitrogen leaching risk analysis must be published to Waikato Regional Council:
 - a. at the time a resource consent application is lodged; and
 - b. as specified in a resource consent; and
 - c. within 30 days of a written request made by the Waikato Regional Council.
 4. One or more of the following decision support tools must be stated in the resource consent and the same tool must be consistently used from year-to-year:
 - a. Overseer; or
 - b. a nitrogen risk scorecard; or
 - c. purchased nitrogen surplus; or
 - d. any other tool specified in the resource consent

Advice note 1: *Except in exceptional circumstances, the choice of tool to use is at the discretion of the farmer.*

Responses from other parties

[263] WRC summarised the responses as follows:

- [26] The responses of the parties include, but are not limited to, the following:
- (a) The Joint Farming Parties are generally comfortable with the concept advanced by WRC to manage and report on nitrogen losses through the FEP. They suggested a minor correction.
 - (b) Fish and Game have identified that they consider that Overseer is the most appropriate tool. They do not support the proposed approach but acknowledge the Court's direction on this matter. In

regard to the proposed FEP approach, Fish and Game do not consider that Purchased Nitrogen Surplus (**PNS**) is suitable as a single measurement because it is not reflective of total nitrogen loss and does not consider other factors such as soil type and rainfall. While it can be combined with other tools it is unclear whether other tools will provide for these factors. Fish and Game acknowledge the potential for record-keeping through the FEP approach to enable future assessments, such as catchment analysis for future plan changes.

- (c) In their first response, Fonterra and DairyNZ do not support the proposal to limit the alternative FEP option to drystock farming. They consider that this is inequitable and would mean that a dairy farm would be subject to a more costly and complex consent process than a drystock farm with the same level of N risk. They raise concerns about the requirement for dairy farms to have both a certifier and a Certified Farm Nutrient Advisor (**CFNA**). They request that the proposed FEP pathway be introduced for dairy farming as well as dryland stock farming, and that WRC consider removing the requirement for dairy farms to have a CFNA on top of a certifier's role. Fonterra and DairyNZ do not support the changes to Schedule B(C) and request the earlier drafting, which did not limit the situations where alternative tools could be used.
- (d) In their second response, Fonterra and DairyNZ acknowledge the Court's findings on PC1 but wish to be clear that it is equally appropriate to investigate alternative tools to Overseer. The reasons for this are set out in their response.
- (e) Mr Pinnell seeks express recognition of PNS as the primary tool for measuring and reporting on nitrogen losses for dry stock farming. Mr Pinnell's response to WRC includes considerable analysis and justification for that tool. Mr Pinnell also reserves final comment until the Schedule can be seen in context.
- (f) WPL is generally comfortable with the proposed changes to Schedule B to introduce the FEP approach for dry-stock farming. It raises some minor issues with the wording and seeks clarity about whether all drystock farming is to use the FEP approach, and why the FEP approach allows for a greater risk of nitrogen losses.

[264] Before discussing our evaluation of Direction 13 as a whole, we address the following two matters raised by parties.

[265] Fish and Game noted it had a fundamental disagreement with the approach, stating that it “does not consider tools should be approved on a case-by-case basis in resource consents” and “It is too early to list ‘nitrogen risk scorecard’ in PC 1”. We share those concerns and return to them later in the decision.

[266] The majority of concerns raised by Fonterra and Dairy NZ were addressed comprehensively through the hearing and the reasons for our determinations are set out clearly in the First Interim Decision. They are final. The reinstatement of clause A3(a) of Schedule B to allow alternatives to Overseer to be used to demonstrate a reduction in contaminant load in accordance with Direction 27 provides a method by which the concerns can be addressed if a suitable alternative to Overseer can be shown to be appropriate. In our view, that could potentially be based on the Fonterra NRS amended to consider biophysical factors, subject to meeting the relevant PC1 tests set out in this decision.

[267] However, we agree with their concern in their 30 October response⁸¹ about dairy farmers needing to engage both a CFEP and a Certified Farm Nutrient Advisor as part of their resource consent application process. This requires reconsideration by WRC. We would expect a CFEP to have nutrient management skills. Schedule 2, Part 1 of the Freshwater Farm Plan Regulations requires certifiers and auditors to have an understanding of:

...

- (j) contaminants and their impacts on freshwater and freshwater ecosystems:
- (k) impacts of farming on freshwater and freshwater ecosystems:
- (l) actions to manage the impacts of farming on freshwater and freshwater ecosystems.

Purchased Nitrogen Surplus

[268] Mr Pinnell suggested that Schedule B(2)(4) be amended as follows:⁸²

For drystock farms, the purchased nitrogen surplus decision support tool must be consistently used except when PNS exceeds 150kg/ha/yr, in which case one of the following tools must be consistently used:

- a. Overseer; or
- b. a nitrogen risk scorecard; or
- ~~c. purchased nitrogen surplus; or~~
- d. any other tool specified in the resource consent

⁸¹ Attached to WRC's 31 October memorandum.

⁸² Mr Pinnell email response dated 30 October, attached to WRC memorandum dated 17 November 2025.

[269] Mr Pinnell did not refer to or propose use of the PNS in his evidence-in-chief when discussing alternative drystock gateway metrics, so this was an unexpected development.

[270] Based on Mr Brocksopp's rebuttal evidence and responses to questions in cross-examination, which we return to below, PNS for drystock farms are unlikely to be anywhere near the 150 kg N/ha/y limit proposed by Mr Pinnell, meaning all farms would be required to use the PNS as the only method of demonstrating compliance with the provisions of PC1. Such a proposal would need to be supported by a robust evidential basis, which was not provided.

[271] The Council Hearing Panel's Recommendation Report did not refer to PNS relating to drystock farming, even though the Decisions Version placed an annual PNS limit of 150 kg N/ha/y in Schedule D1 for an activity to be permitted. There was no reference to its use for activities with more than a low risk of diffuse discharges.

[272] In its appeal, WPL opposed Standard 2(b) of Schedule D1 Part C which limited PNS to 150kgN/ha/yr.⁸³ Federated Farmers' appeal sought that reference to the PNS be deleted from Schedule D⁸⁴.

[273] The appeals by Fonterra and Dairy NZ sought the following amendment to Policy 2:⁸⁵

Opportunity needs to be provided within that rewording for nitrogen reductions to be demonstrated by means other than annual Overseer modelling. For example, purchased nitrogen surplus or Fonterra's Nitrogen Risk Scorecard should be acceptable metrics

⁸³ Wairakei Pastoral Limited Notice of Appeal at [80](c).

⁸⁴ Federated Farmers Notice of Appeal, at page 91.

⁸⁵ Fonterra Notice of Appeal dated 6 July 2020 at page 9; Dairy NZ Notice of Appeal dated 8 July 2020 at page 6.

The evidence relating to PNS

[274] For the purposes of our evaluation, we adopted the definition of PNS as the sum of nitrogen in fertiliser and imported feed less that in exported product.

[275] The Farm Systems experts touched on the relationship between PNS and measured nitrogen leachate rates in their Joint Witness Statement.⁸⁶ When considering “What is the utility of having a purchased nitrogen surplus limit of 150kgN/ha/yr?”, the experts agreed that:⁸⁷

... It should be noted that PNS is an efficiency metric and the experts considered that in a regulatory context the value of PNS is low when the same drivers of risk are being assessed through a different risk assessment (e.g., NRS) and so its utility is questioned.

[276] Mr Brocksopp, giving evidence for WRC, stated in his rebuttal evidence:

54. ... I believe that mechanisms need to be in place for farmers to monitor and manage purchased nitrogen surplus, given its potential to result in increases in contaminant losses. ... I am not aware of any evidence suggesting the 150kgN/ha/yr threshold is not appropriate. For drystock farming, it is unlikely that this requirement will impact the farmers ability to meet the purchased N surplus condition, as nitrogen inputs averaged at farm scale tend to be relatively small (<50kgN/ha) with little to no imported supplements bringing in more nitrogen to contribute to the purchased nitrogen surplus calculation for Schedule D1, Part C – Standards 2b.

[277] In response to a question from Ms Carruthers, Mr Brocksopp replied:⁸⁸

... there'd be average a level of inputs that come into a dry stock farm, the input itself will never be above 150, so by the time you've taken off the output, every dry stock farmer is never going to be in the situation that they're going to be anywhere near that level, so in terms of its value in a dry stock situation, it's probably pretty minimal.

⁸⁶ Expert conference held from 6 to 8 September 2023.

⁸⁷ Matters of Agreement at page 37, at [44].

⁸⁸ Transcript, from page 238.

[278] Mr Wright-Stow, giving evidence for Fonterra and Dairy NZ, stated that 95% of [dairy] farms produced a PNS report.⁸⁹ We received no evidence of the extent to which drystock farms use PNS or for what purpose.

[279] Mr Allen, giving evidence for Fonterra and Dairy NZ, addressed PNS in his evidence-in-chief, stating in relation to the PNS:

[3.16] PNS provides an indication of the amount of purchased nitrogen that remains within the soil profile and is available to be lost to the environment (i.e. either leached below the root zone or as gas). This provides an indication of risk at a whole farm level. It is a useful comparative risk metric – both between farms (particularly farms with similar geophysical values and limitations) and for an individual property over time.

[280] He included the May 2023 Fonterra Risk Scorecard Manual as an attachment to his evidence. This stated:

3.3 ... The purchased nitrogen surplus output does not consider all inputs/outputs of nitrogen from the farm system, such as nitrogen fixation by plants and gaseous N losses. It is therefore a simplified calculation based on farm data rather than a complex model, such as Overseer's 'surplus' output.

The purchased nitrogen surplus is a useful efficiency metric that can be used to inform a farmer/advisor conversation around imported resource cost and profitability opportunities. It can also be used to reference and monitor change over time without the requirement for large amounts of data.

[281] Dr Chrystal compared the different levels of farming intensity for the 2022/23 season of actual farms in the Waikato/Coromandel area for dairy and sheep, beef, deer and other animals using OverseerFM benchmarking data. That season had the greatest number of farms in the dataset at 1,169, including 158 sheep, beef and deer farms.⁹⁰ She produced the following comparative graphs of nitrogen leaching and PNS for sheep beef and deer and dairy farms:⁹¹

⁸⁹ Statement of Evidence of Aslan Edward Wright-Stow dated 28 July 2023 at [5.6(e)].

⁹⁰ Statement of evidence of Dr Jane Marie Chrystal dated 28 July 2023, at [124] and [125].

⁹¹ *Ibid*, at [132]-[134] and [149].

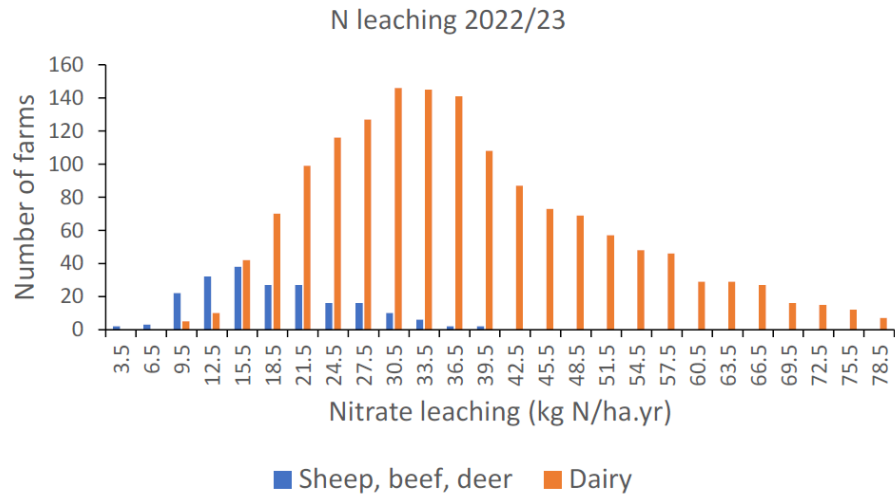


Figure 7: OverseerFM benchmarking data for N leaching in Waikato/Coromandel in 2022/23 for Sheep, Beef, Deer (n = 203) and Dairy (n = 1524) farms

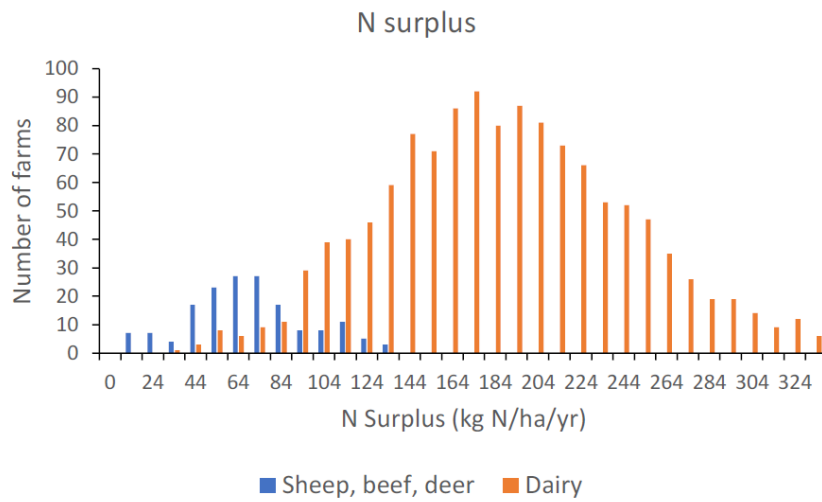


Figure 18: OverseerFM benchmarking data for N surplus in Waikato/Coromandel in 2022/23 for Sheep, Beef, Deer (n = 164) and Dairy (n = 1256) farms

[282] Dr Chrystal was not challenged on this evidence which, as she acknowledged, was not surprising. We adopted it as a general comparison between drystock and dairy farms. It also satisfied us that Overseer can be used as an appropriate tool for managing nitrogen loss from drystock farms.

Our findings in relation to use of the PNS

[283] We find that the PNS is not an appropriate alternative to either Overseer or a NRS for use for drystock farming for the following reasons:

- (a) It was not proposed as an alternative to Overseer until after the issue of the First Interim Decision and other parties had no opportunity to consider or respond to it for the intended purpose.
- (b) While it was addressed in different ways by experts, as summarised above, we find that the evidence before us fell well short of demonstrating that it is an appropriate metric for use as proposed by Mr Pinnell.
- (c) There was nothing to support a proposal that the PNS must be consistently used except when PNS exceeds 150kg/ha/yr. Effectively that would mean all farms would be required to use the PNS as the only method of demonstrating compliance with the provisions of PC1, which is completely untested for that purpose.
- (d) The PNS does not address biophysical characteristics of a farm or consider all inputs/outputs of nitrogen from the farm system, leaving uncertainties about nitrogen fixing by clover as one example.
- (e) No s 32AA evaluation was provided.

[284] We direct that reference to its use as an acceptable decision support tool is removed. If WRC decides to revisit that in the future, it will need to satisfy Schedule B(C).

Consistency of proposals for alternative methods to manage nitrogen loss from drystock farming and CVP

[285] In our minute dated 15 September, we directed WRC:

[43] ... to work with farming parties to propose a method that relies on farm environment plans (**FEPs**) to monitor nitrogen loss risk from drystock farming that is as consistent as possible with the method proposed for CVP.

[286] Farming is defined in the glossary of PC1 as “For the purposes of Chapter 3.11, means the grazing of animals or the growing of produce, including grass, crops, commercial vegetable production, ...” Accordingly, both CVP and drystock activities requiring consents must satisfy the same plan provisions, including the requirements of Policy 2B(b). They must also undertake a Nitrogen Leaching Risk Analysis in accordance with Schedule B(B) where FEPs are relied on. Briefly, the CVP method accepted by the Court required a description of the good management practices to be adopted and prioritised, reporting on key risk factors, using a commercial vegetable production risk scorecard; and references to actions in the Farm Environment Plan that will reduce identified risks. It must be clear that the method for drystock must meet the same requirements.

[287] The requirements of Schedule B(2) relating to nitrogen leaching risk analysis will apply equally to drystock and CVP activities where FEPs are used. However, PC1 Final sets out more specific requirements for managing risk from CVP activities in Policy 3(b) compared to the requirements for managing risk from drystock in Policy 2B.

[288] There must be better alignment between the methods proposed for drystock and CVP, based primarily on that we have approved for CVP, subject to our findings under Direction 18. The key requirement is for FEPs to demonstrate and the CFEPs to be satisfied that risks will be reduced to be as low as practicable within 10 years of PC1 becoming operative or the term of consent.

[289] This will require whatever risk assessment method and support tool used to identify all relevant risks, and to ensure those risks are able to be assessed objectively. This should include consideration of risks associated with higher leaching soils and higher rainfall whether or not they are a requirement of the NRS

uses as the support tool. We strongly agree with WRC⁹² that the use of multiple tools requires consideration.

Decision support tools and equity between dairy and drystock farming

[290] With regard to approved decision support tools that may be used for nitrogen risk assessment, we are satisfied that Overseer would provide greatest certainty for dairy farms with more than a low risk of diffuse discharges. When considering alternatives to Overseer and issues of equity, we first considered the relative risk of nitrogen discharges from individual drystock farms compared to those from individual dairy farms. We found Dr Chrystal's Figures 7 and 18 reproduced above provide a clear graphic illustration that dairy farms are significantly more intensive than the drystock farms in terms of both nitrogen surplus and nitrogen loss.

[291] As acknowledged above, the results were unsurprising. However, while we remain satisfied that the requirement to use Overseer for dairy farms is the most appropriate current way to achieve the objectives, we are also satisfied that the same standard is not necessarily required where the risk of nitrogen discharges is significantly lower, as in the case of that associated with drystock farms.

Our overall findings

[292] The alternative method proposed for drystock does not include the same requirements as apply to CVP and, accordingly does not satisfy Direction 13. To meet it, there must be better alignment between the methods proposed for drystock and CVP, based primarily on that we have approved for CVP, and subject to the matters raised above and our relevant findings under Directions 18 and 27. The key requirement is for FEP to demonstrate and the CFEP to be satisfied that risks will be reduced to be as low as practicable within 10 years of PC1 becoming operative or the term of consent.

⁹² WRC memorandum dated 31 October 2025, at [78].

[293] We find that the use of the NRS for all drystock (both permitted and those requiring resource consents) is appropriate, subject to the following:

- (a) It must be clear that the risk analysis must include a description of the good management practices to be adopted and prioritised, reporting on key risk factors, using a drystock risk scorecard approved by WRC's Chief Executive in accordance with this decision (or Overseer or another approved alternative method), and references to actions in the Farm Environment Plan that will reduce identified risks, consistent with the requirements for CVP.
- (b) The reference to nitrogen risk scorecard in the proposed amendment to Schedule B(2)(4)(b) must be qualified so that its use for anything other than for dairy farms with a low risk of diffuse discharges must have been approved for the intended use in PC1 by the Chief Executive in accordance with Schedule B(C) amended as required by this decision.
- (c) The additional requirements for approving future use of nitrogen risk scorecards set out under Direction 13, other than for dairy farms with a low risk of diffuse discharges requirements, must be incorporated into Schedule B(C).
- (d) The use of the purchased nitrogen surplus is not approved as a decision support tool in Schedule B(2)(4)(c) and reference to it must be removed. If WRC decides to revisit that in the future, it will need to satisfy Schedule B(C) amended as required by this decision.
- (e) The following advice note, or an appropriate equivalent, is to be included in an appropriate location to be consistent with Policy 3(b) relating to CVP activities (refer Direction 18):

Decision support tools approved through the resource consent application process in accordance with Schedule B(B2) must be the most appropriate for the application and may include some or all of

Overseer, a commercial vegetable production or drystock nitrogen risk scorecard approved for use in Chapter 3.11 by Waikato Regional Council's Chief Executive or other alternative approved by the Chief Executive in accordance with Schedule B(C).

[294] For reasons discussed above, WRC is to reconsider the requirement for dairy farmers to engage both a CFEP and a Certified Farm Nutrient Advisor and whether that is appropriate.

[295] It is for WRC, after consultation with other parties, to submit a revised proposal for approval by the Court after considering the above matters.

Scope

[296] Federated Farmers' appeal sought that reference to the PNS be deleted from Schedule D1.⁹³ They sought an amendment to Policy 4 that would allow the calculation of the NLLR to be amended where Overseer does not do a good job of modelling N loss. It also sought an amendment to Method 3.11.3.5 to include guidelines for the use of decision support tools other than Overseer.⁹⁴

[297] We are satisfied that the amended proposals fall within the relief sought by Federated Farmers and that no issues of scope arise in relation to the proposed alternatives to Overseer for use as a decision support tool for assessing and monitoring reductions in nitrogen loss.

Direction 14: Farm scale erosion risks

[298] Direction 14 required WRC to:⁹⁵

Consider if Schedule D2 should be amended to require that farm scale erosion risks (type of erosion occurring/areas of the property at risk/specific location of major erosion sites) are mapped, similar to the requirement in Part C4a. of Schedule D1

⁹³ Federated Farmers Notice of Appeal dated 8 July 2020, at page 91.

⁹⁴ From page 20 and page 44.

⁹⁵ First Interim Decision at [1184].

The issue

[299] While sediment is a significant water quality issue in the PC1 area, the current state of knowledge does not allow specific management policies to be included in PC1. Direction 14 was made to ensure appropriate data is collected during the term of PC1.

WRC response and our findings

[300] We find that the amendments included in PC1 Final satisfy Direction 14.

Scope

[301] Based on WRC's submissions,⁹⁶ which we accept, there is scope to make the amendments.

Direction 15: Amendments to Part B(b) of Schedule D1

[302] Direction 15 required WRC to:⁹⁷

Amend Part Bb [now Ba] of Schedule D1 in WRC's Final Proposal by adding at the end "except where such discharges are already as low as practicable", and to require five yearly reporting to demonstrate that progress has been made.

Our findings

[303] We are satisfied that Direction 15 has been met by the amendments included in PC1 Final. No issues of scope arise, as this is a consequential amendment in view of the new s 70(3) requirement in the RMA that contaminant reductions from permitted activities must contribute to a reduction in effects within 10 years.

⁹⁶ Memorandum of counsel for WRC dated 4 August 2025, Annexure A Consultation document, at [160].

⁹⁷ First Interim Decision at [1184].

Direction 16: Amendments to Part D2a of Schedule D1

[304] Direction 16 required WRC to:⁹⁸

Amend Part D2a of Schedule D1 in WRC's Final Proposal to include a requirement to demonstrate a reduction in contaminants loads and to require five yearly reporting to demonstrate that progress has been made.

Our findings

[305] We are satisfied that Direction 16 has been met by the amendments included in PC1 Final.

Scope

[306] This provides greater clarity relating to the underlying requirement in PC1 to reduce diffuse discharges of the primary contaminants and is consistent with new s 70(3) of the RMA. No issues of scope arise.

Direction 17: Recommend if a definition of crop rotation should be included in PC1

[307] Direction 17 required WRC to:⁹⁹

Recommend if a definition of crop rotation should be included in PC1.

The issue

[308] Crop rotation is an important issue for the CVP community and was a significant issue through the PC1 process. As there is currently no definition of crop rotation in the plan change, we directed WRC to recommend if a definition should be included, as discussed in Part F9 of the Interim Decision.

⁹⁸ *Ibid.*

⁹⁹ First Interim Decision at [1184].

Substantive responses to the First Interim Decision

[309] WRC proposed a definition in its consultation document, which HortNZ acknowledged reflected their discussions. However, following a period of further consideration and further input from growers, HortNZ proposed limited changes to this definition in its memorandum to WRC dated 25 July. In a subsequent memorandum dated 15 August to the Court, HortNZ submitted slightly different proposed amendments.

The September Judicial Telephone Conference and resulting directions

[310] In our pre-conference minute, we stated in relation to crop rotation:

[67] In its memorandum dated 15 August 2025 to the Court, HortNZ stated that WRC's proposed definition of crop rotation in its Final Proposal does not reflect the true and practical growing patterns of CVP in the Waikato region. HortNZ proposed the following amended definition to ensure clarity and to reflect the practical growing patterns and requirements of CVP: [proposed changes underlined and highlighted where different to WRC's proposed version below]

Crop rotation: is the practice of systematic planting of different vegetable and arable crops in sequence, or in combination, over multiple years within the same property, and/or on changing properties across sufficient suitable land, where commercial vegetable growing is the usual land use, but where the land is temporarily used for farming which is not a vegetable crop, which can and often does include periods of pasture and/or arable phases and fallow periods, and can involve grazing of animals. The purpose of this practice is to help reduce soil erosion, maintain soil structure and nutrients in the soil, reduce plant diseases and pests, improve biodiversity and to maintain productive vegetable yields.

[311] We then stated that unless WRC or any other party informs the Court that they disagreed with this proposed amendment, we will direct that it be made.

[312] Prior to the JTC, WRC tabled the following further amended definition, which was included in its Final Proposal dated 1 December 2025, which was the same as that advanced at the September JTC. **Differences between the two versions are highlighted.**

Crop rotation: is the practice of systematic planting of different vegetable and arable crops in sequence, or in combination, over multiple years within the same farm, and/or on changing farms, where commercial vegetable growing is the usual land use which can and often does include pasture and/or arable cropping phases and fallow periods, and can involve grazing of animals. The purpose of this practice is to help reduce soil erosion, maintain soil structure and nutrients in the soil, reduce plant diseases and pests, improve biodiversity and to maintain productive vegetable yields.

[313] At the JTC, Ms Buxeda, counsel for HortNZ, confirmed that it is not seeking the changes proposed by WRC and sought the definition quoted in the minute.¹⁰⁰

[314] In response, Mr Conway explained:

There were two elements of concern that led to those changes. One was around the phrase “across sufficient suitable land”. In the context of the definition the council considers that phrase is a bit subjective and too uncertain and it’s unclear who would determine either what is sufficient or suitable. It was also unclear what that phrase added to the definition, as without it the same land would appear to fall within the definition. So we’ve removed that wording or not included it in the version we’ve provided.

The second component was the words around CVP being the usual land use. That component is really important from the regional council’s perspective because if those words are not included then it reduces certainty and could expand coverage of the definition to pieces of land where CVP is very infrequent or occasional use of the land, and that’s got implications for the area of land that’s considered to be existing CVP. So the council considers that crop rotation for CVP needs to be clear that commercial vegetable production is the predominant or usual land use, and that’s why that wording has been included in the version that we’ve circulated this morning.

Our evaluation and findings

[315] After considering both definitions and the responses from both counsel, we are satisfied that WRC’s version provides clarity of intent, adequately addresses HortNZ’s concerns and significantly reduces the potential for different interpretations. Accordingly, we find that the definition included in PC1 Final is the most appropriate to achieve the objectives.

¹⁰⁰ Transcript, from page 90.

[316] We note the change from “property” to “farm” is an outcome of Directions 3 and 25, which we accept. However, while there a definition of “farming” in the Glossary, there is no definition of “farm” in the Glossary or in the Regional Policy Statement or the Regional Plan.

[317] WRC’s Final Proposal includes consequential amendments to the heading 3.11.4 Rules/Ngā Ture and sub-paragraphs (a) and (c) and the deletion of (d). We accept the proposed amendments but as the header refers to “a farm (as defined in the Glossary)”, a definition needs to be provided.

[318] We accept the proposed amendments to Rule 3.11.4.6(5) in PC1 Final and to the definition of CVP.

[319] We find that Direction 17 has been met by the proposed amendments.

Scope

[320] In its appeal, HortNZ sought the insertion of a definition of “property” to ensure it allows for commercial vegetable rotations and that Rule 3.11.4.5 ensure it allows for commercial vegetable production rotations.

[321] We are satisfied this provides scope to include a definition of crop rotation.

Direction 18: Nitrogen losses from CVP activities

[322] Direction 18 required WRC to:¹⁰¹

Propose a method to be included in PC1 that sets out how WRC will ensure that the risk of nitrogen losses from CVP activities are to be determined, monitored and/or enforced

The issue

[323] It was clear from the evidence that Overseer has significant limitations as a tool for estimating nitrogen losses from CVP activities and that no agreed alternative

¹⁰¹ First Interim Decision at [1184].

had been identified. The 2024 amendment to s 107 of the RMA requires WRC to be satisfied that the conditions of any consents granted will contribute to a reduction in effects on aquatic life receiving waters. It is necessary to have a documented and auditable method of demonstrating a reduction will occur and for PC1 to set it out to avoid unreasonable levels of discretion having to be exercised by individual regulatory staff, as discussed in Part F9 of the Interim Decision.

[324] We directed WRC to propose a methodology or clear framework for demonstrating that nitrogen risk is reducing or is as low as possible and to indicate how it proposed to address s 107(2A) of the RMA. Put another way, we directed WRC to propose a workable alternative method to Overseer to be included in PC1 as a decision support tool that sets out how it will ensure that the risk of nitrogen losses from CVP activities are to be determined, monitored and/or enforced. We return to the issue of alternatives under Direction 27. Some the issues relevant to the method of monitoring nitrogen losses from drystock farming under Direction 13 are also relevant, particularly the basis of our acceptance of the use of the NRS in PC1. This is as a tool to assist in understanding, assessing and managing risk.

Substantive responses to the First Interim Decision

[325] WRC considered that based on the evidence, “currently there is no tool that CVP farmers could routinely use to calculate nitrogen leaching from their operations”. It stated:¹⁰²

CVP operators are required to undertake a risk assessment process that identifies the ways in which the farming activity could present a risk of diffuse discharge of nitrogen, phosphorus, sediment and microbial pathogens to water. Actions are required to be described in the FEP which will reduce those identified risks. This process should give some confidence to the grower, farm advisors and WRC regulatory staff that risks are likely to decrease.

¹⁰² Memorandum of counsel for WRC dated 4 August 2025, Annexure A consultation document from [180]; also in the memorandum from [166].

[326] WRC considered that a range of risk assessment tools will or may have a role in assessing the risk of nitrogen loss from CVP activities, including Overseer for some crops, APSIM and risk scorecards. It stated:¹⁰³

Methods to be used for determining, monitoring and enforcing a reduction in the risk of nitrogen losses from CVP will need to be chosen through the consent processes for CVP operations, given that there is no one tool that could currently be required in a policy or rule for CVP. ...

[327] WRC proposed a new policy 3(b) in its 4 August memorandum.

[328] HortNZ included a number of suggestions in its memorandum to WRC dated 25 July, which WRC included in the version proposed to the Court. This included the deletion of an earlier proposal relating to the information which may be included as set out at the end of the Policy. HortNZ was concerned this could be used by a consents officer to require Overseer information be provided in relation to a CVP application, which we return to below in our evaluation and findings.

[329] WRC's amended proposal was:

[167] Consent applications shall show through the FEP and using decision support tools, how the risk of diffuse discharges of nitrogen, phosphorus, sediment and microbial pathogens to water from the commercial vegetable operation is being appropriately managed, monitored and tracked over time.

Information shall include:

- i A description of the good management practices to be adopted and prioritised, and how these will be managed, monitored and tracked over time; and
- ii Reporting on key risk factors, using a commercial vegetable production risk scorecard; and
- iii Reference to actions in the Farm Environment Plan that will reduce identified risks of diffuse discharges of nitrogen, phosphorus, sediment and microbial pathogens to water bodies; and
- iv Details of how the Sustainable Vegetable Systems (SVS) crop budget tool is used for the commercial vegetable production operation; and ...

¹⁰³ *Ibid*, Annexure A consultation document, at [189].

[330] In its response to WRC, the Waikato and Waipā River Iwi stated in relation to Policy 3B:

[12] While acknowledging the intent of this proposed new Policy, the River Iwi emphasise the fundamental importance of CVP assessment tool being an industry standard that is consistent over time (ie, to be effective, one needs to keep using the same version of the tool across all CVP land blocks to enable comparison and review). Is there potential for this point – ie, the CVP risk scorecard being an industry standard – to be expressly included somewhere in Policy 3B or elsewhere in PC1?

[331] As noted under Direction 13, Fish and Game considered “It is too early to list ‘nitrogen risk scorecard’ in PC 1”.

[332] HortNZ did not identify any concerns with the proposed new policy in its memorandum dated 15 August to the Court.

The September Judicial Telephone Conference and resulting directions

[333] No party raised issues relating directly to Direction 18 at the JTC.

[334] Following a more complete review of the proposals, we identified two particular concerns, which we addressed in our 15 September post conference minute as follows:

[47] WRC advised that HortNZ considered that the statement that information may include the use of decision support tools that indicate risk of diffuse discharges should be deleted due to concerns that it may be used by a consent officer to require Overseer information to be provided in relation to a CVP operation. Alternatively, it should be clear that such information may be included at the grower’s election only.

[48] WRC also advised that the River Iwi and CNI queried whether the CVP risk scorecard could be expressly included as an industry standard (that is consistent over time) in Policy 3(b) or elsewhere in PC1.

[49] The Court also has concerns about the same two matters raised above. The first relates to the requirement for information to include “[r]eporting on key risk factors, using a commercial vegetable production risk scorecard”. We make it clear that the Court has not found the use of a CVP NRS to be an acceptable alternative model to Overseer to demonstrate a reduction in contaminant losses from CVP in a regulatory role. Any new method must not leave any party interpreting it as if the Court has approved the use of the NRS. The key requirement is to ensure that all relevant risks are identified. WRC will

need to be satisfied that whatever risk assessment method is used, it identifies all relevant risks, and that the method ensures those risks are able to be assessed objectively.

[50] The second matter relates to the need for clarity on what is meant by “decision support tools”. We do not accept that should be “at the grower’s election only”, as proposed by HortNZ. PC1 is a regulatory process for which WRC is responsible, not a consent applicant, and the reference to decision support tools is to remain.

[51] We direct WRC to propose an alternative Policy 3(b) to address the above matters and any other outstanding matters relating to CVP after further consultation with HortNZ.

[335] We also directed WRC to consider if the changed definition of “property” had any relevance to the issue of consent activity status for CVP activities.

WRC’s further proposals and parties’ responses

[336] Amendments to Policy 3(b) were proposed in WRC’s 31 October memorandum, after considering responses from parties, including HortNZ, as follows:

75 ...

- b. Consent applications ~~shall~~ must show through the FEP, and using tools that help describe and manage the risk of contaminant losses ~~decision support tools~~, how the risk of diffuse discharges of nitrogen, phosphorus, sediment and microbial pathogens to water from the commercial vegetable operation is being appropriately managed, monitored and tracked over time. Information must be proportional to the scale of the activity and risk of losses, and must ~~shall~~ include:
- i A description of the good management practices (particularly those in the HortNZ Nutrient Management Code of Practice and the Erosion and Sediment Control Code of Practice) to be adopted and prioritised, and how these will be managed, monitored and tracked over time; and
 - ii Reporting on key the risk of contaminant losses factors, including through the use of a tool approved through the resource consent application process, such as Overseer, or a commercial vegetable production risk scorecard using; and
 - iii Reference to actions in the Farm Environment Plan that will reduce identified risks of diffuse discharges of nitrogen, phosphorus, sediment and microbial pathogens to water bodies; and

- iv Details of how the Sustainable Vegetable Systems (SVS) ~~crop budget~~ tool is used ~~for the~~ to support decisions to optimise ~~determine the optimum~~ nitrogen fertiliser use for commercial vegetable production operation; and

[337] WRC explained the changes as follows:

- [76](c) Removal of the two examples in clause (ii) (i.e. Overseer and a commercial vegetable production risk scorecard) will avoid misinterpretation of the policy.
- [77] WRC does not consider that the final amendment meaningfully changes the way the policy works. However, the change acknowledges the Court’s findings that it is premature to treat the CVP Nitrogen Risk Scorecard as an accepted alternative approved model when the Court has not received sufficient evidence to make such a determination
- [78] While Policy 3(b)(ii) includes a generic reference to the kind of tool and does not seek to name a particular tool, the amendment avoids the risk that the policy is misinterpreted as endorsing a particular tool. In the policy, WRC continues to emphasise the use of multiple tools, including the Sustainable Vegetable Systems tool, along with other evidence sources.

Our evaluation and findings on matters in dispute

Preliminary matter

[338] By way of a preliminary matter, in its 25 July memorandum relating to WRC’s responses to the First Interim Decision, HortNZ stated, with a footnoted reference to “Amended Rule 3.11.4.5(2)”:

- [3] The wording in WRC’s Final Proposal appears to restrict “existing CVP” to “the land used by the applicant for commercial vegetable production in the period 1 July 2006 to 30 June 2016”. We understand that since 2016, land used for CVP has changed ownership. It therefore appears that an applicant who is applying for consent for existing CVP who has acquired that land, that was used for CVP in the baseline, since 2016 (a period of almost 10 years) would not qualify as “existing”, and consequential on that interpretation would therefore be required to pass through the discretionary pathway for “expansion”.

[339] We note that HortNZ sought deletion of the words “used by the applicant” in its appeal. The words “land used by the applicant for commercial vegetable

production” appear only once in PC1 Final in the header to Rule 3.11.4.5(2). There are no other references in PC1 to land needing to have been owned by the applicant before it can be granted consent, nor is there any resource management reason for that to be the case. It is the use of land, not its ownership, that is relevant. Unless WRC can demonstrate there is a specific need for inclusion of the words “owned by the applicant”, we direct that they are removed.

Use of Overseer for managing CVP activities

[340] In its 25 July response to WRC’s proposed initial amendment to Policy 3(b), HortNZ stated:

[19] HortNZ suggests the deletion of the information which “may be included” as set out at the end of the Policy due to concerns this could be used by a consents officer to require Overseer information be provided in relation to a CVP application. Alternatively ... HortNZ suggests the clarification that this information may be included “at the grower’s election” only.

...

[26] ... For the reasons set out in evidence for HortNZ relating to the unsuitability of Overseer in relation to CVP, and echoed by the Court in the Interim Decision, HortNZ requests that changes be made removing the requirement for an Overseer assessment as part of an assessment for CVP in this catchment.

[341] Part F9 of the Interim Decision addressed the monitoring of nitrogen reductions from CVP activities under its own sub-heading in considerable detail. We acknowledge that Mr Ford questioned the appropriateness of using Overseer for CVP, including that it is not currently capable of modelling all possible crop types therefore forcing the modeller to choose proxy crops to represent the crop and that he does not support the use of Overseer to determine regulatory thresholds.

[342] For the avoidance of doubt, Overseer is not used in PC1 to determine regulatory thresholds.

[343] We were clear in earlier minutes and the Interim Decision that we accepted the limitations of Overseer as a decision support tool for CVP activities. We stated in the First Interim Decision that:

[682] ... We consider that because of the particular limitations and uncertainty of Overseer for use with CVP activities, no reliance could be placed on comparative results from Overseer modelling because of the different crop rotations that would be used over time. For that reason we consider that the use of FEPs could provide an acceptable alternative, provided a clear method is documented to the satisfaction of the Court.

[344] That was based in large part on Mr Ford's evidence that Overseer is not capable of modelling all possible crop types. However, we had not turned our minds at that time to whether that is the case for all crop types, which could mean it has no utility of any kind for that purpose. On further review, there is nothing in HortNZ's evidence to enable us to reach that conclusion. As WRC considers that Overseer is appropriate for some crops, as noted above, and that is consistent with the Court's understanding from another case where the capabilities of Overseer for CVP have been addressed, we accepted that and find, for that reason, that the ability to use Overseer for some crops must be retained in PC1 when considering CVP activities. In any event, there is no scope to remove its use.

[345] The extent of use of Overseer, if any, can only be determined at the consent application stage, a point made by WRC. Based on the Court's understanding, the crops for which it cannot be used with any certainty are relatively well identified and should be set out in guidelines for consent applicants agreed between WRC and HortNZ. That will limit the discretion available to consent officers. The practicality of using Overseer for different crop rotations will need to be determined through FEPs certified by CFEPs and, in our view, a consent officer who was not qualified as a CFEP would need to have solid grounds for challenging a FEP certified by a CFEP approved by WRC as meeting its specified requirements.

Our overall findings

[346] We find that the use of FEPs is the most appropriate way for CVP to achieve the objectives of PC1, subject to the relevant matters raised under this Direction and under Directions 13 and 27 of this Decision.

[347] We find that Policy 3(b) as included in PC1 Final is the most appropriate to meet the objectives, subject to the inclusion of the following advice note:

Decision support tools approved through the resource consent application process in accordance with Schedule B(B2) must be the most appropriate for the application and may include some or all of Overseer, a commercial vegetable production [or drystock] nitrogen risk scorecard approved for use in Chapter 3.11 by Waikato Regional Council's Chief Executive or other alternative approved by the Chief Executive in accordance with Schedule B(C).

Scope

[348] Scope to remove the words “used by the applicant” is provided by HortNZ’s appeal.

[349] We are satisfied there is no scope to remove Overseer and note that neither HortNZ nor the Pukekohe Vegetable Growers Association sought its removal in their appeals. However, the ability to include alternative models has been sought by HortNZ since PC1 was first notified. It outlined the difficulty of using Overseer for CVP activities in some detail in its submission to the Notified Version of PC1 and sought that PC1 provides for the establishment of an alternative method or model to Overseer for use with CVP activities. It also sought that Schedule B be written to take account of its concerns, including:¹⁰⁴

The Nitrogen Reference Point must be calculated using the current version of the OVERSEER Model, APSIM or SPASMO (or any other model approved by the Chief Executive of the Waikato Regional Council).

[350] In its appeal, HortNZ sought that Policy 3 be amended to ensure consistency with Schedule B, which we note includes provisions for alternative models to Overseer to be used. In its memorandum dated 18 July, WRC identified

¹⁰⁴ HortNZ submission dated 8 March 2017, at [4.61], [10.12] and 10.14C.

appeals that it considered provided scope for the proposed amendments, including that:

[50] Pukekohe Vegetable Growers Association seeks amendments to policy 3 to “Ensure Nitrogen Leaching Loss Rate wording aligns with Schedule B”. WRC considers that this provides scope for the proposed changes because clause A3(a) of Schedule B allows the use of alternative approved models. Alignment with Schedule B could therefore involve amendments to policy 3 which are similarly open to the use of alternative methods (without removing the role of Overseer altogether).

[351] WRC considered there is scope under the appeals for changes similar to those set out in its memorandum dated 27 June 2025 and stated there is scope for the amendments it proposed. In its July memorandum, WRC invited any party who disagrees with its conclusions “to state their position when they respond to WRC’s consultation paper on 25 July 2025” and stated that it would confirm its position when it files its final response with the Court on 4 August 2025. In that memorandum, it confirmed that there is scope for the amendments proposed.¹⁰⁵

[352] In relation to the need for a s 293 process, WRC stated in its 4 August memorandum that:

[175] The only party that responded on this issue was HortNZ which reserved its position regarding the need for a s 293 process until the final provisions as proposed by WRC have been reviewed. HortNZ considered this necessary to determine whether there is any possibility or risk of Overseer being applied to, or required for, assessment of CVP

[353] Having undertaken our own review of scope, we agree with WRC and find that there is scope for the proposed amendments.

Direction 19: Ensuring clarity of Schedule C

[354] Direction 19 required WRC to:¹⁰⁶

Consider if it would be clearer to clarify that Schedule C: Minimum farming standards applies to pastoral farming only, as stating in Schedule C that clauses 6, 7

¹⁰⁵ Memorandum of counsel for WRC dated 4 August 2025 at [176].

¹⁰⁶ First Interim Decision at [1184].

and 9 do not apply to CVP as currently proposed lacks clarity, at it could mean that either greater or lesser limits could or should apply.

WRC's response

[355] In its memorandum dated 4 August, WRC proposed amendments that addressed the Direction and advised that HortNZ and Waikato and Waipā River Iwi supported them.¹⁰⁷

Our findings

[356] PC1 Final includes an amendment which satisfactorily addresses Direction 19.

Scope

[357] No issues of scope arise.

Directions 20 and 21: (relating to slope) Stock exclusion regulations

[358] Directions 20 and 21 required WRC to, respectively:¹⁰⁸

Amend the stock exclusion provisions of Schedule C so that for permitted activities, all stock must be excluded from all water bodies on land with slopes of up to 10° as soon as practicable and in all cases within five years of PC1 becoming operative, as proposed in WRC's Final proposal (subject to limited exceptions as discussed in Part F31). For consented activities, all stock must be excluded from all water bodies on land with slopes of up to 10° as soon as practicable and in all cases within an appropriate specified period set out as a condition of consent. Within five years of PC1 becoming operative, all FEPs must identify all unfenced streams on land with slopes between 10° and 15° and set out a programme to complete all fencing within a further five years or, alternatively, such other timeframe considered to be a more appropriate specified period or set in the next plan change.

Amend Schedule C of WRC's Final Proposal to:

- replace the 10° slope with the 15° slope included in the Decisions Version;
and

...

¹⁰⁷ From [177], and Annexure A consultation document from [193].

¹⁰⁸ First Interim Decision at [1184].

The issue

[359] The stock exclusion provisions were the subject of considerable dispute at both the Council hearing and through the appeals. They were addressed in detail in Parts F11 to F15 of the First Interim Decision and it was of particular concern to us that in the Decisions Version, for an activity to be permitted, all fencing was required to be completed within two years of PC1 becoming operative and within one year in sub-catchments identified as a priority for *E. coli* in Table 3.11-2.¹⁰⁹ Our concern was that, because of the lengths of fencing still to be completed, it would likely mean that few, if any, of the 2,800 farming activities with a low risk of diffuse discharges would meet the standard and would require consent.

[360] We stated:

[764] Of relevance, the need for and timing of fencing can only be addressed on a farm-by-farm basis, rather than on a PC1-wide basis. Time must be allowed for farm specific investigations and planning of expenditure to ensure that available funds are directed to achieving the most benefit to the environment in the shortest time-frame. That may not always be the fencing of streams. This is supported by Federated Farmers' appeal at [12], which is reproduced in Part E22.

...

[768] ... *Norris et al* estimated it would take a further 20 years from 2017 to complete the fencing of all pastoral waterways in the region based on the rates achieved over the previous 15 years, with the rates progressively increasing.

[361] It was clear from WRC's initial response (and those of other parties) that considerable differences remained between them, the underlying reasons for which were workability, practicality and affordability, which are fundamental considerations in any planning process. It was also clear that resolution of the disputes was still going to require considerable further work. By way of a road map, the process followed was as set out in the table below. While all matters raised by parties were considered in our evaluation, we do not attempt to address all of them in the summary below.

¹⁰⁹ Decisions Version Schedule C, at 4.

(a)	Minute dated 8 July clarifying and responding to matters raised in the parties' initial submissions to the Interim Decision, including a comprehensive section on "Practicality of the stock exclusion provisions for drystock farmers"	8 July 2025
(b)	WRC memorandum setting out substantive responses to directions in the First Interim Decision, following consultation with other parties, including an updated version of PC1 at same date and responses to WRC's consultation document from 19 parties (listed above) attached to the memorandum	4 August
(c)	Memoranda to the Court from JFP and Mr Pinnell, which include comments on the cost and practicability of stock exclusion on different slopes and from Forest and Bird and Fish and Game relating to times for completion of fencing	15 August 18 August 1 September
(d)	Opportunity for all parties to address stock exclusion provisions at the JTC	3 September
(e)	Comprehensive minute issued following the JTC in relation to stock exclusion with further directions	19 September
(f)	WRC memorandum responding to 19 September stock exclusion memorandum	25 November
(g)	Responses to WRC's consultation document from eight parties attached to the memorandum ¹¹⁰	
(h)	Responses to "PC1 Final" from Fish and Game, Lochiel, Mr Pinnell, WPL	1 December

Substantive responses to the First Interim Decision

[362] WRC identified a number of concerns it had about aspects of the direction and also addressed concerns raised by the parties.¹¹¹ Briefly, these related to:

- (a) The timing and order within which fencing must be completed, depending in part on slope.
- (b) The way in which fencing is to be addressed when activities are permitted and ensuring the provisions apply the appropriate tests for permitted activities.

¹¹⁰ From Director-General, Fish and Game, JFP (two parties), Lochiel, Mr Pinnell, Waikato and Waipā River Iwi and WRA.

¹¹¹ Memorandum of counsel for WRC dated 4 August 2025 from [184], and Annexure A consultation document from [196].

- (c) Ensuring clarity about which water bodies the provisions apply to, which WRC correctly assumed to be all Schedule C water bodies.

[363] WRC responded to Direction 20 in its 4 August memorandum in a way that addressed its concerns and took into account the concerns raised by the parties. The key amendment proposed related to timing requirements in Schedule C Clause 3 of WRC's December 2023 version, as follows:¹¹²

3. The timeframe for achieving Clauses 1 and 2 above is as follows:
 - a. For farming that is permitted under Rules 3.11.4.1, 3.11.4.2 and 3.11.4.3, Clauses 1 and 2 above must be complied with as soon as practicable, ~~and in all cases~~, generally no later than 5 years, ~~and in all cases no later than 10 years~~ after this chapter becomes operative, with steady progress toward compliance over the time required.
 - b. For farming that requires consent under Rules 3.11.4.4, 3.11.4.5, 3.11.4.6, 3.11.4.7, and 3.11.4.8 and 3.11.4.10, Clauses 1 and 2 above must be complied with as soon as practicable and in all cases within an appropriate specified period set out as a condition of consent.
 - c. The programme of works for achieving Clauses 1 and 2 above is to be provided in the Farm Environment Plan.

[364] WRC noted that Rule 3.11.4.9 simply authorises land use change, not the ongoing land use or discharge, so this rule does not need to be referred to in 3(b) above. Rule 3.11.4.10 is the new restricted discretionary rule for development of TWAL.

[365] WRC proposed adding a new clause 6 to Schedule D1, Part C, and a new clause 3(g) to Schedule D2, Part C as follows, noting new numbering in Annexure C of the WRC Memorandum to the Court dated 27 March 2025:¹¹³

A programme to undertake and complete the stock exclusion requirements (including fencing) fencing as required by Schedule C.

¹¹² At [185](b).

¹¹³ At [187].

[366] WRC identified that the main outstanding issue related to the proposal for an alternative Schedule D1 consent process where a farm, which was otherwise a permitted activity, is not able to complete stock exclusion within the 10-year period.¹¹⁴ To address this concern, it proposed that Rule 3.11.4.4(2) be amended to read as follows:

[188] Farming is undertaken in conformance with the minimum farming standards in Schedule C except in the case of stock exclusion where a tailored solution may be approved as part of a Farm Environment Plan lodged with the resource consent application. Where the activity complies with all of the conditions in Rule 3.11.4.3, except that the timeframe in Schedule C(3)(a) cannot be met, then a tailored solution may be approved as part of a Schedule D1 Farm Environment Plan, in which case the activity shall comply with all of the conditions in Rule 3.11.4.3, except condition 2 as it applies to Schedule C(3)(a), and none of the remaining conditions of this rule shall apply; and

[367] The following consequential amendment to the heading of the rule was proposed:

[189] Rule 3.11.4.4 Controlled Activity Rule – ~~Moderate intensity farming with more than a low risk of diffuse discharges and low risk farming where stock exclusion requirements cannot be met~~ /Te Ture mō te Tūmahi e āta Whakahaeretia ana – Te mahi pāmu e āhua muia ana e te karaehe

[368] WRC summarised responses to its proposals relating to Direction 20 set out in its discussion document. They were received from the JFP, Mr Pinnell, WRA, the Waikato and Waipā River Iwi and CNI and Fish and Game. We reviewed each response and noted the following matters.

[369] The JFP identified “practical issues with different timeframes for different slopes” and considered WRC’s proposal that Schedule C stock exclusion is to be completed “as soon practicable, generally no later than 5 years, and in all cases no later than 10 years” to be a pragmatic solution within the constraints of the current process.

¹¹⁴ At [192](a).

[370] The JFP also raised an issue relating to implementation guidance, stating that the effect of the wording of Schedule C clause 1(b)(ii) is that there is a presumption that all waterbodies on land above 15 degrees must be fenced and this can only be rebutted if a CFEP has identified areas where fencing is impracticable and proposed measures to address the matters listed in that clause.¹¹⁵ The JFP considered that:¹¹⁶

... this is one area where it will be important for WRC to develop pragmatic guidance for farmers to ensure that expectations are clear and practicable. Ideally, this would include photographs (like the critical source area guidance document) of types of waterbodies on different terrain and the types of mitigations, as alternatives to fencing, which might be considered.

The Joint Farming Parties consider that it is critical that implementation guidance is developed in consultation with farmer leaders and industry groups to ensure it is clear, understandable and fit for purpose.

[371] They proposed the following change to Rule 3.11.4.4, Condition 2:¹¹⁷

Farming is undertaken in conformance with the minimum farming standards in Schedule C except in the case of stock exclusion where a tailored solution may be approved as part of a Schedule D1 Farm Environment Plan lodged with the resource consent application, in which case the activity shall comply with all of the conditions in Rule 3.11.4.3 except condition 2 and none of the remaining conditions of this rule shall apply; and

[372] The JFP also stated that it would not make sense to have a contractor fence part of a stream up to 10 degrees and then come back to finish the rest five years later. They considered that the farm plan should prioritise the fencing of particular waterbodies with higher ecological value or at greater risk of damage from stock access. We considered these points to be particularly important and took them into account when making our determinations on this issue.

[373] Mr Pinnell also supported WRC's proposed amendments and supported the JFP's proposal above relating to Rule 3.11.4.4.¹¹⁸

¹¹⁵ Memorandum of counsel for JFP dated 25 July 2025, at [61].

¹¹⁶ At [62] and [63].

¹¹⁷ At [68].

¹¹⁸ Mr Pinnell's memorandum dated 27 July 2025, at [32].

[374] Fish and Game raised a number of issues in support of its submission that the requirement to complete fencing on land with a slope less than 10 degrees within 5 years and having 5 or 10 years to complete that work from when the decision is made is not unreasonable.¹¹⁹ It raised the same issues in its 15 August memorandum to the Court.

[375] The Director-General supported the alternative wording proposed by Fish and Game.¹²⁰

[376] The WRA stated in its 15 August memorandum to the Court that:

[14] The WRA Response noted concerns about the Council's proposal including that it may result in fencing efforts for permitted activities being delayed until closer to the 10 year deadline, and that this would be unfortunate, given the significant improvements in water quality that stock exclusion can deliver. That said, the WRA Response confirmed that the WRA had carefully considered the amendments proposed by the Council and was comfortable that the clear direction to Farm Environment Plan authors/certifiers was that delaying any fencing effort until the 10 year 'final deadline' would not be appropriate. On that basis, the WRA was comfortable with the amendments proposed by the Council in the consultation document.

[377] However, the WRA opposed WRC's proposed amendment to Rule 3.11.4.4(2), stating:

[17] The stock exclusion provisions as proposed by the Council in its consultation document set a clear expectation that delaying stock exclusion measures would not be appropriate.

[18] The now-proposed amendment to Rule 3.11.4.4(2) undermines that expectation. ...

[378] In their 15 August memorandum to the Court, Fonterra and Dairy NZ stated that they do not wish to raise any matters in relation to WRC's response.

¹¹⁹ Fish and Game's memorandum to WRC dated 25 July 2025, at [2]-[5].

¹²⁰ Director-General's memorandum to the Court dated 15 August, at [3]-[6].

The September Judicial Telephone Conference and resulting directions

[379] In paragraph [83] of our pre-conference minute we stated that stock exclusion would require discussion at the JTC but “to assist the parties, we note the following preliminary views of the Court”:

- (a) There are significant uncertainties associated with the lengths of streams that require fencing and there is no practical way to set an end date in accordance with s 32. Our current view is that the proposed amendment to Rule 3.11.4.4(2) provides appropriate middle ground as a short-term measure for the next 10 years; and
- (b) We originally proposed the provision favoured by Fish and Game in terms of fencing of land on 10° and 15° slopes. After consideration of feedback from farming parties, we acknowledge that the optimum timing of fencing on different slopes on individual farms cannot be set as a blanket rule in a regional plan. It requires site specific consideration of what measures will bring about the greatest environmental benefits in the shortest possible time frame. As the remaining time frame for achievement is 70 years or thereabouts, we do not consider that whether fences are completed on the different slopes in five or 10 years will materially affect the outcomes required.

[380] A range of views was expressed at the JTC, including by Mr Pinnell, who had estimated that for some hard high country drystock farmers, the cost of fencing streams with slopes of up to 15 degrees could range between half a million and a million dollars. While the figures were not tested at the hearing and could not be relied on as evidence, the lower figure was close the \$400,000 estimated by the Court for one drystock farm,¹²¹ and it reinforced to need to consider workability and practicability with particular care.

[381] A key message we took from discussions at the JTC (and in memoranda) was the need for greater clarity as to how the provisions will be applied. There was uncertainty about when streams on slopes greater than 15 degrees had to be fenced.¹²²

¹²¹ Minute dated 19 September at [83].

¹²² Transcript, at page 52.

[382] In our post-conference minute dated 19 September, which related solely to stock exclusion, we stated in relation to the issue of fencing above 15 degrees that:

[2] As stated in the Interim Decision, we determined that water bodies on land with slopes up to and including 15° are to be fenced. That was based on the extensive farming evidence presented to the Council hearing and the Court that fencing below a 15° slope is practicable. Anything above 15° is generally not. That is no longer in dispute and a definitive number provides certainty for all parties.

[383] We are satisfied that any lack of clarity has been removed by amended clause 5 of Schedule C in PC1 Final, which states in relation to water bodies that must be fenced:

(b) in any paddocks with a slope up to and including 15 degrees, unless a certified FEP for the farm has identified areas where fencing is impracticable and included an alternative to fencing for those areas in accordance with clause 7 below; and.

[384] At paragraph [4] of the minute, we recorded that Mr Pinnell had stated in his memorandum to the Court dated 15 August that WRC had not responded in any significant way to concerns about substantial issues he had raised during the hearing. The JFP expressed concern that each iteration of Council's drafting seemed to be imposing more and more obligations on farming activities.¹²³ We then set out our concerns about the inadequacies and almost complete absence of any evidence relating to s 32AA evaluations undertaken, observing that:

[9] PC1 is a complex plan change and ensuring it is workable is particularly challenging for WRC. The consequences of it being found to be unworkable mean that it would quickly lose credibility and the desired environment outcomes would not be achieved.

...

[13] Unavoidably, large uncertainties remain. Significant matters are unclear and remain in dispute. While PC 1 is based on managing risk, we have seen no documented assessment of implementation risk and we were not provided with any evaluation to support the proposed amendment to Rule 3.11.4.4.

¹²³ Joint memorandum dated 15 August 2025 to the Court, at footnote 1, that "three versions of track changes to PC1 had been put forward (to the parties and/or the Court) between 11 July 2025 and 8 August 2025".

...

[16] ... Realistic timeframes must be set and further consideration needs to be given to what permitted activities can realistically achieve within 10 years.

...

[18] ... So that there is no misunderstanding as to what we will require to be addressed, we set out our updated evaluation of the evidence and submissions to date relating to the dispute. It is for WRC to consider if it agrees with the evaluation, which is not a determination, and to take it into account or not, as it considers appropriate, before making its response.

[385] “Our updated evaluation” was comprehensive, of necessity, and included consideration of costs and other requirements that must be considered in a s 32AA evaluation, none of which had been provided by WRC, and which relied on the outcome of Court questions and the outcomes of further Court directed expert conferencing. In doing so, we relied on s 269(1A) and (2) of the RMA, which requires the Court to regulate its proceedings in a manner that best promotes their timely and cost-effective resolution, and which may be conducted without procedural formality where this is consistent with fairness and efficiency.

[386] To ensure that the requirements of 269(2) were met, our directions in the minute included:

[138] Within the same 10-day timeframe, we invite submissions from parties on whether they consider there were any calculation errors or matters of fact, expert opinion or law of direct relevance to the issues that have been omitted or not been referenced appropriately in the minute and in our minute dated 15 September 2025.

[387] In response to that direction, WRC stated:¹²⁴

[9] WRC considers that there is one matter in the Stock Exclusion Minute that would benefit from clarification. Paragraph [5] of the Stock Exclusion Minute stated that the Notified Version of PC1 required all stock exclusion fencing to be completed within 7 to 10 years of PC1 becoming operative. WRC notes that Schedule C in the Notified Version of PC1 (notified on 22 October 2016) required stock exclusion to be completed no later than 1 July 2023 or 1 July 2026, or within 3 years of a land use change having been authorised.

¹²⁴

Memorandum of counsel for WRC dated 3 October 2025

[388] The 7 and 10-year timeframes were the indicative differences between the years the plan was notified and the years by which fencing had to be completed. They were included as background information to illustrate that based on the evidence elicited through the hearing, the expectations of what was achievable by way of mitigation at the time the plan was notified was seriously overestimated.

[389] Fish and Game also responded but they did not raise any issues that brought into question the validity of our updated evaluation.

[390] In the minute, we accepted WRC's proposed amendments to Schedule C(3)(a) to (c) in its Final Proposal dated 8 August relating to provisions for fencing on slopes up to 15 degrees for activities to be permitted.¹²⁵ Our reasons included the amendments suggested/proposed by the JFP, which go to the heart of the need for the provisions to be workable and practicable, which we had emphasised throughout. We agree with them and accept them.

[391] The consent process for farms that could not meet the permitted activity timeframes for stock exclusion remained at issue and we sought a number of clarifications in the post conference minute, including:

[111](a) ... what criteria will be used to determine how much stock exclusion must be achieved within 10 years of PC1 becoming operative, which we note will be an issue for activities on land with a slope greater than 15°?

[392] We directed WRC:

[113] ... to address all the above issues ... and any others of relevance with the parties and submit proposed amendments for consideration by the Court, including any consequential amendments required, together with a summary of any dissenting views by parties.

[393] We summarised the evidence relating to stock exclusion generally in some detail and the potential costs for individual farmers. For one farm, the estimated cost was approximately \$400,000, which is not dissimilar to Mr Pinnell's lower estimate. Indicatively, we estimated the average cost of fencing streams on drystock

¹²⁵ Court's Minute dated 19 September 2025 at [107].

farms with slopes of up to and including 15° could be \$135,000 per farm.¹²⁶ This was for the purposes of gaining some understanding of the possible magnitude of costs, based on what we considered to be low unit rates, which we specified, to avoid overstating costs. Actual costs are more likely to be higher than lower, but reliable costings will only be possible following more detailed investigation on a farm-by-farm basis and prices at that time.

[394] Another issue that required further work related to the requirement to fence water bodies with a slope greater than 15° where the stock units are more than 18 per hectare. This was determined as appropriate by the Hearing Panel but had been removed in WRC's Final proposal dated 1 December 2023, without a robust evidential basis and was not supported by a s 32AA evaluation.

[395] In the post-conference minute we stated:

[96] We are not satisfied that it is appropriate to delete the reference to greater than 18 SU/ha based on the proposal as presented. ...

[97] It is difficult at this late stage to be confident that unintended consequences will not arise. It is also unclear to us if the proposed amendment could have implications for activities that would otherwise be permitted. While we have an open mind on the appropriateness of removing the 18 S U/ha requirement, we require WRC to provide more robust justification for its removal after further discussions with parties. ...

[98] We direct WRC to review its proposed amendment and if it wishes to pursue it, to provide a properly reasoned justification for the proposed change and address other matters raised above and confirm it is satisfied that there is no potential for unintended consequences.

[396] We also directed WRC to respond to other matters relating to Stock exclusion from water bodies on land with slopes greater than 15 degrees.

[397] At a more general level, we stated:

[127] We are of the view that WRC must provide greater clarity as to what FEPS must cover to remove the uncertainty that clearly and understandably exists in the minds of the farming community. ...

¹²⁶ Minute dated 9 September at [122].

[398] We set out our preliminary ideas on what matters might need to be considered.

WRC's further proposals and parties' responses

[399] WRC provided its response in a memorandum dated 25 November, in which it recorded:

[8] WRC engaged in informal discussions with key parties in relation to the Stock Exclusion Minute, including those specifically recognised in the Minute. WRC then circulated a consultation document to all relevant parties for comment on 13 November 2025 (**Appendix A**). A tracked changes version of Schedule C was circulated alongside the consultation document (**Appendix B**).

[400] WRC subsequently circulated a consolidated update of the provisions to the parties on 18 November and invited them to provide comments by 25 November. It stated:

[12] ... To enable comments to be received and considered, WRC proposes to file the final set of provisions with the Court by 28 November 2025. This is one week later than anticipated in our memorandum dated 13 October 2025 but is necessary to allow the amended provisions to be tested with the parties and final checks to be made before they are filed with the Court.

[401] By the date of the 25 November memorandum, responses to the consultation document had been received from the JFP, Mr Pinnell, Fish and Game, the Director-General, WRA, Lochiel and the Waikato and Waipā River Iwi, copies of which were included in Appendix C of the memorandum.

[402] After considering the responses received, WRC submitted PC1 Final with its memorandum dated 1 December. These included amendments made after an independent review of the proposals undertaken in accordance with Direction 35, which we return to below. WRC had received further responses from Mr Pinnell, Lochiel, WPL and Fish and Game. These were included in Appendix A of the memorandum, with WRC's responses set out in Appendix B.

Stock exclusion from water bodies on land with slopes greater than 15 degrees

[403] WRC summarised proposed changes to Schedule C at [27] of the 25 November memorandum as follows:

- (a) Changes have been made that require stock exclusion on land of any slope where the activity is relatively intense, such as break feeding, grazing on an annual forage crop and grazing on land that has been irrigated with water in the previous 12 months.
- (b) WRC does not consider the 18 stock units per hectare threshold included in the Decisions Version of Schedule C as being appropriate or implementable, for the reasons traversed at the Joint Witness Conference.
- (c) Changes have been made to recognise that fencing of land over 15° in slope is generally not practicable and therefore is something to be considered in the FEP, rather than as a minimum farming standard.

[404] It stated:

[28] The proposal also reordered Schedule C into a more logical sequence and made several clarifications, simplifications, and improvements to drafting. WRC also noted that consequential changes will be needed to rules and schedules to reflect the proposed re-ordering and approach.

...

[30] WRC has considered the responses from the parties, and its final proposal remains unchanged from that set out in the consultation document in Appendix A and the tracked changes in Appendix B, other than for minor wording changes and improvements to clauses 4, 5 and 6 of Schedule C.

Farms with a low risk of diffuse discharges that cannot complete stock exclusion within 10 years

[405] WRC's 25 November memorandum next addressed the Court's directions at [111] in the 19 September minute relating to Condition 2 of Rule 3.11.4.4, which was intended to allow a Schedule D1 (rather than a Schedule D2) FEP where all permitted activity requirements are met other than in relation to stock exclusion. WRC noted in the consultation document included with the memorandum that on reflection:

[11] ... the undefined concepts embedded in it (such as ‘tailored solution’), and the way the matters of control are not constrained, the rule is at risk of failing to lead to the intended narrow and focused resource consent process.

[406] WRC responded to all the clarifications sought at [111] in the minute. It was clear from the responses that the available information does not assist in quantifying the number of farms that will be required to apply for controlled activity consents because of their inability to complete stock exclusion within 10 years.

[407] PC1 Final includes in Rule 3.11.4.4 the following new clause 4C and new matters of control:

4C The use of land for farming, which is not commercial vegetable production, including any associated diffuse discharge of nitrogen, phosphorus, sediment and microbial pathogens into water or onto or into land in circumstances which may result in those contaminants entering water, where:

i. All conditions of Rule 3.11.4.3 are met, except for the timeframe in Schedule C(9);

WRC reserves control over the following matters for 4C:

i. The method and timeframes by which stock exclusion requirements in Schedule C are achieved, and actions and mitigations to reduce effects to be implemented prior to stock exclusion being completed.

ii. Compliance with the conditions of Rule 3.11.4.3.

iii. The duration of the resource consent.

[408] The rule overall was significantly amended from earlier proposals and we do not reproduce it here. We address the proposed changes to the extent relevant below.

Responses from other parties [from Appendix C of WRC’s memorandum dated 25 November]

[409] The Director-General confirmed support for the proposals in the consultation document as a suitable way forward, including the amended Rule 3.11.4.4, subject only to the Waikato River Authority’s requested simple drafting

change to clause 7 being adopted. The Director-General also supported the Waikato River Authority's request for the FEP guidance to include guidance on virtual fencing.¹²⁷

[410] The Waikato River Authority submission was:¹²⁸

[4] ... generally comfortable with the Council's Consultation Document and where the stock exclusion provisions have landed. In particular, the WRA is comfortable with the new proposed Part 4C to Rule 3.11.4.4 as the mechanism for addressing farmers that seek a longer timeframe for meeting stock exclusion requirements.

[5] the WRA considers that clause 7(a) should also more explicitly require virtual fencing to be specifically considered when assessing practicability.

[411] WRC stated it had discussed the merits and practicability of virtual fencing with farming interests¹²⁹ and referred to Mr Pinnell's evidence about its suitability for drystock farmers, which from our review of that evidence is primarily one of affordability.

[412] WRC stated it had:

[72] ... taken account the applicability of the stock exclusion provisions to farming sectors other than drystock, such as the dairy sector, for whom virtual fencing may be more practicable in the short-term. Suggested amendments to the text of clause are set out below, which do not go as far as suggested by WRA, but will ensure that virtual fencing is appropriately considered in any assessment of practicability, during which the matters set out by Mr Pinnell would be able to be considered.

[413] It went on to propose an amendment to clause 7 of Schedule C to address these matters and, while it did not include the full wording proposed by WRA, WRC considered it achieved the same outcome and accepted the proposed amendment.

[414] The Waikato and Waipā River Iwi focussed on issues of practicability, clarity and uncertainty relating to clause 7 of Schedule C and made a broader suggestion

¹²⁷ Correspondence from Brookfields dated 19 November.

¹²⁸ Email dated 13 November.

¹²⁹ From [71].

related to guidance documents about how to interpret the provisions.¹³⁰ WRC stated:

[73] WRC notes the River Iwi suggestions for making clause 7 clearer, particularly with respect to the wording related to flood risk. In WRC's view this does make clause 7 more robust and likely to result in more consistent assessments. WRC also supports the need for transparency and availability of assessments of practicability, given it is a relatively novel concept and has a high level of influence on the degree of fencing to be undertaken.

[415] We accept WRC's comments.

[416] The JFP supported WRC's proposal to reorder Schedule C into a more logical sequence and, in principle, also supported WRC's proposed approach to identifying waterbodies which must be fenced.¹³¹ However, the JFP were concerned that the proposed definition of break feeding is not precise enough and could capture a range of low intensity, rotational grazing practices on hill country. They set out their reasons, which WRC responded to in its memorandum dated 25 November.

Break feeding

[417] From our review of different versions of PC1, reference to break feeding first occurred in the Decisions Version, but there was no definition of break feeding in any version up until PC1 Final. In his evidence-in-chief, Mr Trebilco proposed an amendment to Schedule D1, Part C(5)(d) to read "Break feeding of sacrifice paddocks", without any further definition. This remained unchanged in WRC's Final proposal dated 1 December 2023. In the 4 August 2025 version in response to the First Interim Decision, it was further amended to include intensive winter grazing.

[418] The first time a definition of break feeding was proposed was in PC1 Final and was referred to in WRC's paragraph [27](a) above. That definition is from the

¹³⁰ WRC memorandum dated 25 November, Appendix C, Waikato and Waipā River Iwi and CNI response to WRC consultation document dated 13 November.

¹³¹ *Ibid*, JFP response to WRC consultation document dated 19 November at [3]-[4].

25 October 2024 version of the Resource Management (Stock Exclusion) Regulations 2020, which is the same as that in the original version that came into force on 3 September 2020. WRC must ensure PC1 is in accordance with relevant regulations.¹³² The definition is:

Break feeding means the feeding of stock within an area of pasture or crop:

- (a) within a paddock in which the fence is moved regularly to allow the stock to graze another area of pasture or crop within the paddock; or
- (b) within a paddock:
 - (i) that is subdivided into cells or grids using temporary fencing; and
 - (ii) where the stock are moved regularly.

[419] The JFP sought the deletion of paragraph (b) or the following definition:¹³³

[14] Break-feeding means the feeding of animals on paddocks where feeding space is controlled by the movement of an electric fence.

Break-feeding – Livestock in a paddock where access to pasture or forage in a section of the paddock is controlled by the frequent movement of a temporary fence or other method to contain the livestock.

[420] Based on WRC's response, there are elements of uncertainty with both options. WRC considered that:

[33] ..., in endeavouring to reduce the potential to inadvertently capture extensive rotational grazing, those alternatives would narrow the definition too far and would exclude intensive grazing that is achieved by the movement of the stock through cells rather than by movement of the fence. In addition, at least two of the three options contain similar elements of uncertainty or interpretation, such as "moved regularly" or "frequently moved". WRC considers that a late replacement of this definition has some risks that have not been adequately explored, particularly in relation to either overly narrowing stock exclusion requirements above 15 degrees or unintentionally capturing extensive rotational grazing. Overall, WRC prefers to maintain the current definition from the Stock Exclusion Regulations, in the absence of a well-tested and agreed alternative.

¹³² Resource Management Act 1991, s 61(1)(e).

¹³³ WRC memorandum dated 25 November, Appendix C, JFP response to WRC consultation document dated 19 November at [14].

[421] Having carefully considered both points of view, the differences between the definition in the regulations and the alternative proposed, the late raising of this an issue and having previously raised concerns about the potential for unforeseen consequences to occur,¹³⁴ there is a need for caution. We received no evidence that would justify the Court overriding a regulation and for that reason, we find that the definition is to remain as that in PC1 Final.

18 stock units paddock density threshold

[422] WRC stated that it did not consider the 18 stock units per hectare threshold to be appropriate or implementable, for the reasons traversed at the Joint Witness Conference. That was a conference of farm systems experts held from 6 to 8 September 2023 attended by 17 experts. The experts agreed:¹³⁵

18 stock units per hectare at paddock level is an incredibly low stock density that will be exceeded on nearly all farms. Dairy cow grazing is around 1,000 stock units per hectare at paddock level.

It is not possible to provide a specific CSU as it is a complex dynamic situation that involves many contributing factors. Minimising non-sheep stock access to waterways is best addressed via a FEP.

[423] The JFP agreed with WRC's proposed changes to Schedule C reproduced above and noted further practicability issues discussed in Mr Verry's evidence and difficulties and complexities in calculating stocking rates at a paddock level. There would also be difficulty in determining if the limit had been breached.¹³⁶

[424] Mr Pinnell supported WRC's proposed changes.¹³⁷ We note that we share his concerns about guidance documents and return to that in Part C. We also note

¹³⁴ First Interim Decision, at [117], [303] and [675].

¹³⁵ Joint witness statement for conferencing held 6-8 September 2023 at [27].

¹³⁶ WRC memorandum dated 25 November, Appendix C, JFP response to WRC consultation document dated 19 November 2025 at [15] and [16].

¹³⁷ *Ibid*, Mr Pinnell's response to WRC consultation document dated 19 November 2025, at [6].

that Lochiel advised it had contributed to Mr Pinnell's response and supported his comments.¹³⁸

[425] In other respects, the majority of Mr Pinnell's response addressed matters already determined by the Court or sought to introduce further evidence, which we had made clear would not be considered. Other matters addressed went beyond what was required by the directions and were not considered.

[426] We find that removal of the 18-stock unit provision is appropriate.

Proposed amendment to Rule 3.11.4.4

[427] WRC's proposed changes received general support and satisfactorily address the matters raised in our post conference minute.

Slope threshold determination

[428] Fish and Game considered that the slope test should be applied within 10 metres and where land within 10 metres of a waterbody has an average slope of less than 15 degrees, the waterbody should be fenced.¹³⁹

[429] WRC advised that:

[35] ...

... during the development of the current framework, several options were considered and tested through the LIDAR mapping and with farmer feedback. This included a "corridor only" slope assessment as proposed by Fish and Game. The corridor only slope assessment was considered less suitable for three reasons:

- (a) Farmer feedback was that it is unusual to have large paddocks with widely disparate slope profiles – such as half with a slope of over 15 degrees and half "flat", as these areas would be inefficient to manage with quite different stock management needs as well as productivity, and therefore a paddock scale assessment is appropriate.

¹³⁸ *Ibid*, email from Ms Muggeridge dated 19 November 2025.

¹³⁹ *Ibid*, Fish and Game response to WRC consultation document dated 19 November 2025 at [4].

- (b) Slope in the paddock is highly correlated to intensity and productivity, meaning that the paddock as a whole is what is relevant to coarsely identify what ought to be fenced.
- (c) When tested with the LIDAR developed mapping, the corridor immediately adjacent to the waterbody was often inconsistent with the wider slope, meaning it was a poor indicator of the slope of the wider paddock. This was particularly so for flat land with incised Streams.

[430] While understanding Fish and Game's concerns, we consider that the slope of the wider paddock requires consideration in terms of contaminant loss, not just the 10 metres closest to the stream. We must also consider the evidence of the farming community, which has the direct knowledge and experience of how farms operate. We have considered their feedback and accept it, meaning that we do not accept Fish and Game's proposed amendments.

Our evaluation and overall summary of findings

[431] We addressed concerns relating to fencing in considerable detail in the First Interim Decision, including:

- [764] ... the need for and timing of fencing can only be addressed on a farm-by-farm basis, rather than on a PC1-wide basis. Time must be allowed for farm specific investigations and planning of expenditure to ensure that available funds are directed to achieving the most benefit to the environment in the shortest time-frame. That may not always be the fencing of streams. ...

[432] We also addressed them in our minutes dated 8 July, 27 August and 19 September, which was necessitated by the complexity of the issues and the remaining wide diversity of views between parties.

[433] We accept the following amended proposals in PC1 Final:

- (a) WRC's proposed amendments to Schedule C(9) relating to timeframes for achieving stock exclusions by permitted and consented activities.

- (b) Amendments to Rule 3.11.4.4. relating to permitted activities that cannot meeting the timing requirements in Rules 3.11.4.1, 3.11.4.2, and 3.11.4.3.
- (c) Removal of the 18-stock unit per hectare provision relating to stock exclusion on land with slopes greater than 15 degrees.
- (d) The method of monitoring slope.
- (e) The definition of break feeding.

[434] Having also considered the parties' feedback and WRC's responses in its memorandum dated 25 November, we generally accept WRC's responses, noting that our determinations relating to Purchased Nitrogen Surplus under Direction 13 apply. We also considered other submissions made by parties following issue of the Interim Decision and we are satisfied that they have been addressed in PC1 Final to the extent appropriate.

[435] Of particular note, we do not consider it would be appropriate to require all fencing of water bodies on slopes of up to 15° within the term of PC1 when there is no certainty that it is realistically achievable based on the limited information currently available. Further, there is no certainty that it would produce the optimum environmental benefits within the term of PC1, including for the reasons given above by the JFP.

[436] We agree with and accept the amendments proposed to Schedules C, D1 and D2 and confirm that the provisions apply to all Schedule C water bodies and that Direction 21 relating to stock exclusions has been met.

Scope

Timeframes for stock exclusion

[437] Federated Farmers submissions to the Notified Version included in relation to Policy 2.e: Requiring stock exclusion to be completed within 3 years following the

dates by which a Farm Environment Plan must be provided to the Council, or in any case no later than 1 July 2026. They stated that “there is almost no assessment of the costs of the stock exclusion requirements on landowners”. They sought that Policy 2.e. be amended as appropriate to give effect to the “Keeping stock out of our waterways” provisions of the government’s Clean Water package 2017. This was intended to provide stock exclusion on a staggered basis through to 2030 and landowners unable to meet the requirements could apply for permission to instead develop a stock exclusion plan with their regional council.

[438] In its appeal, Federated Farmers sought that Controlled Activity Rule 3.11.4.4 be amended to include farming which cannot meet one or more of the standards in Schedule C, one of which included a requirement to exclude all stock no later than 1 July 2026. It sought the following amendment to Schedule D4:¹⁴⁰

4. For farming that is permitted under Rules 3.11.4.1, 3.11.4.2 and 3.11.4.3, Clauses 1 and 2 above must be complied with, unless an alternative timeframe is proposed in a FEP or as part of a resource consent application:

[439] We are satisfied this provides scope to allow stock exclusion to be completed for consented activities over periods longer than 10 years and Schedule C of the Decisions Version only limited timeframes for the exclusion of stock for activities to be permitted.

[440] In its appeal, Federated Farmers stated in relation to paragraph 4 of Schedule C:

Federated Farmers is concerned that the timeframes of 1 and 2 years to complete stock exclusion requirements are not sufficient, particularly given that most catchments would need to achieve this in 1 year, the limited availability of fencing contractors and other resources and the number of farmers that would need to comply (particularly if the slope requirement and definition of waterbodies are not amended). Federated Farmers considers that 5 to 10 years (as opposed to 1 or 2 years) from the date PC1 is operative ought to be provided (with greater and different prioritisation of sub-catchments to provide for a staged implementation during this period.

¹⁴⁰

Federated Farmers Notice of Appeal dated 8 July 2020 at page 80.

[441] It sought that paragraph 4 be amended as follows:

4. For farming that is permitted under Rules 3.11.4.1, 3.11.4.2 and 3.11.4.3, Clauses 1 and 2 above must be complied with, unless an alternative timeframe is proposed in a FEP or as part of a resource consent application:

Amend the timeframes in paragraph 4 so that they are extended by 5 to 10 years (as opposed to 1 to 2 years) after PC1 becomes operative.

[442] As noted in our minute dated 8 July:

[38] We addressed timeframes from paragraph [544] of the interim decision and were satisfied that there is scope with regard to permitted activities to require mitigation measures to reduce diffuse discharges to be as low as practicable within 10 years. That took into account the above amendment sought by Federated Farmers to the timeframes in paragraph 4 of Schedule C to require the completion of stock exclusion fencing for permitted activities in 10 years from the date PC1 becomes operative, not our above finding is that we did not find scope to extend the period to require mitigation measures to reduce diffuse discharges to be as low as practicable beyond 10 years without going through a resource consent process.

[443] In our minute dated 19 September, we stated:

[3] ... the conditions and standards in the rules for pastoral farming activities to be permitted will have to be met within 10 years of PC1 becoming operative if they are to be in scope.

[444] We confirm that there is no scope to extend the 10-year period for permitted activities and that the amendment proposed to controlled activity rule 3.11.4. 4(C) is consistent with Federated Farmers appeal and no issue of scope arise.

Scope to limit water bodies that need to be identified and mapped in an FEP to those that require stock improvement

[445] The JFP stated in their response dated 19 November to WRC's consultation document:

[19] At paragraph 49 of the consultation document, WRC states that it cannot find any appeal points which provide scope to limit the waterbodies that need to be identified and mapped in a farm plan to those which require stock exclusion.

- [20] The Joint Farming Parties have reviewed Federated Farmers’ appeal. While that appeal did not seek to limit the mapping requirements to those waterbodies which require stock exclusion, the appeal did seek to limit the mapping requirements in respect of intermittently flowing waterbodies (see page 89 of the appeal in respect of Schedule D1 and page 103 in respect of Schedule D2).
- [21] The appeal specifically sought to limit the mapping requirements to intermittently flowing waterbodies “where relevant”. Given that the number of intermittent streams are likely to be a lot higher than the number of permanent streams on any particular property, the Joint Farming Parties consider that if the mapping requirements were limited to intermittent waterbodies which require stock exclusion or are directly linked to FEP actions, that would be more practicable and cost effective than requiring all intermittent waterbodies to be mapped.

[446] We have reviewed the appeal and are satisfied that it provides scope to limit the mapping of streams to those to which actions are included in the FEP to exclude stock within the term of PC1. In the interests of the efficient use of resources, we could see no benefit in showing the locations of streams that would not be addressed within the term of FEP. The schedules are to be amended to reflect the amendment sought by Federated Farmers.

[447] We do not consider any other issues of scope arise.

Direction 21: Relating to wetlands and Schedule C

[448] A second component of Direction 21 related to wetlands and required WRC to amend Schedule C to:¹⁴¹

delete 4c of Schedule C and replace it with “any natural wetland that supports a population of threatened species as described in the compulsory value for threatened species in the NPSFM 2020”.

The issue

[449] The Waikato River Authority raised a concern about the definition of threatened species.¹⁴² It was concerned that the NPSFM may be repealed or

¹⁴¹ First Interim Decision at [1184].

¹⁴² Memorandum of WRA to WRC dated 25 July 2025 at [10].

amended and requested that reference to the NPSFM be deleted and the following definition included:

threatened species means:

any indigenous species of flora or fauna that:

- (a) relies on water bodies for at least part of its life cycle; and
- (b) meets the criteria for nationally critical, nationally endangered, or nationally vulnerable species in the New Zealand Threat Classification System Manual.

[450] The proposed definition is from the NPSFM 2020, meaning that the amendment would not result in any change in the effect of the direction. No other party opposed the proposal.

[451] We accept that Direction 21 has been met in relation to wetlands by the proposed amendments and that no issues of scope arise.

Direction 22: Farm Environment Plans

[452] Direction 22 required WRC to:¹⁴³

Address the matters relating to Farm Environment Plans in Part F21.

The issue

[453] The purpose of FEPs is to demonstrate a general improvement in farming practice to reduce diffuse discharges of the four primary contaminants and contribute to the achievement of the target attribute states in Table 3.11-1. They are indisputably the primary tool by which PC1 outcomes will be delivered and must be prepared and complied with by approximately 5,000 farms in the PC1 area. For farmers, they will be the focus of the new, more restrictive regulatory regime and workability and practicability will be key to successful implementation. Ensuring the FEP provisions are efficient and effective is a key RMA requirement and principles

¹⁴³ First Interim Decision at [1184].

(a) and (b) in Part C6 of the First Interim Decision provided the starting point for our evaluation process:

[319] ...

(a) The provisions of PC1 must reflect what is practicably achievable in a diverse environment ...

(b) The provisions must still be as clear on their face, certain, workable, practicable, enforceable and equitable as possible in the circumstances, ...

[454] The provisions remained in dispute following the issue of the First Interim Decision, with certification and audit requirements for permitted and consented activities being a major concern for farming parties. We provide relevant background to this issue and other directions in the First Interim Decision as our starting point.

Background to changes in certification and audit requirements for permitted and consented activities during the appeal period

[455] The terms “certification” and “audit” were not used in the Decisions Version other than audits of Certified Sector Schemes, which were not an issue under appeal. Part E of Schedule D1 of the Decisions Version required FEPs for permitted activities to be reviewed by a CFEP within 12 months of the date that the FEP is required and thereafter at intervals of no more than three years. Part E of Schedule D2 of the Decisions Version required FEPs for activities requiring consent to be reviewed by a CFEP within 12 months of the granting of a consent application and in accordance with the review intervals set out in the conditions of the resource consent.

[456] For permitted activities, the purpose of the review was to provide an expert opinion as to whether the farming activities on the property are being undertaken in a manner that meets the Part C minimum standards. For consented activities the purpose of the review was to provide an expert opinion as to whether the farming activities on the property are being undertaken in a manner consistent with the goals and principles set out in Part C of Schedule D2.

[457] One of the reasons for Federated Farmers' appeal was that it considered that the review of actions on farm against FEPs ought to be reasonable and cost effective.¹⁴⁴ While Fonterra and Dairy NZ gave one of their specific grounds of appeal as "No independent certification is required for the many farms that will have permitted activity status", that was not correct, as indicated below. The Pukekohe Vegetable Growers Association sought that Policy 6 be expanded "to utilise existing industry schemes and to provide for Certified Sector Scheme certification and auditing of farm plans".

[458] No other appeals addressed certification of FEPs.

[459] In WRC's Final Proposal dated 1 December 2023, Part E in both Schedules D1 and D2 required certification and audit of an FEP in accordance with Part 9A of the RMA and the Freshwater Farm Plan Regulations, which came into force on 1 August in either 2023 or 2024, depending on the FMU. Part 9A was subsequently revoked and ceased to apply in the Waikato region from 25 October 2024.

[460] Mr Trebilco explained his proposed amendments to the provisions in response to the first change arising from the Farm Plan Regulations in his supplementary evidence dated June 2023. They required a farm operator to arrange for an audit of an FEP within 12 months of certification or recertification of an FEP. The requirements applied to both permitted and consented activities.

[461] WRC subsequently addressed its proposed changes to the FEP provisions in response to the revocation of Part 9A of the RMA in its memorandum dated 27 March 2025, stating that it supported provisions to ensure that farmers are only required to produce one farm plan.¹⁴⁵

[462] The proposed amended provisions included changes in the introductory parts of Schedules D1 and D2 to clarify requirements for FEPs in the event that national regulations eventually require FEPs in the Waikato and Waipā catchments.

¹⁴⁴ At page 105.

¹⁴⁵ At [15] and [17].

The provisions provided that FEPs (under PC1) shall be considered to be FFPs (under the regulations), and regional plan requirements and national requirements shall be integrated into a single farm planning document. To achieve that, the relevant provisions in Schedules D1 and D2 apply in addition to the requirements of any national regulation. Schedule D3 provided for certification and audit of FEPs to occur in accordance with national regulations at such time the regulations apply in the Waikato and Waipā catchments.

[463] In view of the significance of FEPs, we invited parties to respond to any issues they raised in relation to WRC's memorandum which they considered to remain unresolved.¹⁴⁶

[464] We note there were significant differences between WRC and parties relating to the timing of initial certification and audits and subsequent recertification and audits, which we summarise below.

Our findings relating to FEPs in the First Interim Decision

[465] We stated:

[871] In view of the level of agreement reached between the parties and because the certification and audit procedures proposed by WRC are closely aligned with the Freshwater Farm Plan Regulations⁴⁴¹, we generally accept WRC's Final Proposal set out in Annexure C of the memorandum, subject to further consideration being given to audit procedures and the matters set out in (a) to (e) below.

[872] We acknowledge that HortNZ continues to seek that the Court approves the use of industry approved FEP certifiers and auditors for use in PC1 processes going forward. We accept that such an approach could be an efficient and effective way to achieve the objectives of PC1, subject to appropriate checks and balances. We did not receive sufficient evidence to make a determination as to what these should be or what process should apply, for example in relation to the PC1-specific concerns raised by WRC. We would also need to be satisfied there is scope to introduce such a change and if there is not, a s 293 process could be required.

...

[874] The proposed audit procedures also were of concern to the Joint Farming Parties, which supported an approach based on the risk to water,

¹⁴⁶ Emailed direction dated 28 March 2025.

and to Mr Pinnell, who also supported a risk-based approach and the use of random audits as an alternative to the proposed procedures. Amendments to Schedule D3, Part C2 should be considered to provide greater clarity. ...

[875] There is general agreement among parties that both certification and auditing are important and we agree, subject to the processes being efficient and effective. There is uncertainty about the adequacy of appropriately trained professional resources necessary to undertake both processes and WRC and farming interests agree that duplication and conflict should be avoided. Until there is national direction on the use of industry managed certification processes, we accept that WRC's proposals for certification and five-yearly recertification are appropriate.

...

[466] We also stated that reconsideration was required as to whether the dates specified in Table 3.11-2 should be the dates by which FEPs must be submitted or certified, for the reasons set out by Mr Pinnell.

Substantive responses to the First Interim Decision

[467] WRC's substantive response was set out in its memorandum dated 4 August. It had consulted with parties by seeking responses to a consultation document it provided dated 11 July.

[468] In relation to the Table 3.11-2 issue raised above, WRC proposed a number of amendments to address concerns raised by parties in relation to its initial proposals in the consultation document. These included an amendment to Rule 3.11.4.3(7)(e) to require FEPs to be submitted to a CFEP by the date in Table 3.11-2 and certified within a further six months, instead of requiring them to be certified by the specified date. It also proposed an amendment to allow timeframes for auditors' final reports to be provided to be extended. The significant concerns of the JFP, WPL and Mr Pinnell relating to the dates by which FEPs must be submitted to a CFEP and certified were addressed by WRC's proposed changes in response.

[469] We agree with and accept those changes.

[470] In relation to audits of FEPs, WRC stated in the consultation document:

- [215] This matter needs to be addressed in section 32AA terms. ... FEPs are the process by which the risks of diffuse discharges of nitrogen, phosphorus, sediment and microbial pathogens are determined for each farm, and by which farm actions are determined for mitigating these risks. In WRC's view, they are the most important aspect of PC1 in terms of ensuring the PC1 objectives will be met. WRC needs to know if farms are being operated in accordance with the actions specified in the FEP action plan. This is important from the point of view of section 35(2)(b) of the RMA, which requires WRC to assess the efficiency and effectiveness of the PC1 provisions.
- [216] Farmers need to know that their action plans will be audited, that they are not just documents that sit on a shelf, but documents that are actively referred to by farmers when planning their farming operations. It is important that farmers know their action plans will be audited at a regular frequency and that they are expected to put in place the actions.
- [217] Note that currently, farmers would be required to arrange for an auditor to audit the farm against the actions at the frequency specified. This is a regulatory requirement of the farmer. That gives the requirement significantly more importance than a requirement on WRC to request an audit at any time. The responsibility for auditing needs to be on the farmer and written into PC1.
- [218] WRC considers that FEPs and their action plans are too important to be audited randomly. All action plans need to be regularly audited...
- ...
- [221] Note that the regularity of audits in Schedule D3 were based on the Freshwater Farm Plan (FWFP) Regulations 2023. ...

[471] WRC estimated the cost of audits at "say \$1,200 per audit" (which Mr Pinnell considered would be much higher).

[472] WRC noted that its functions and duties under the RMA should not be confused with the role of the auditor in Schedule D3 of PC1:

- [223] ... who, unlike WRC staff, is not a warranted enforcement officer. The auditor is on site at the invitation of the farmer, makes an assessment, and reports the findings to WRC.
- [224] WRC ultimately has discretion regarding how it goes about undertaking compliance monitoring and enforcement activities. WRC might choose to undertake some random compliance inspections, although the reporting of auditors may better support a more strategic or risk-based approach instead, which is more in keeping with best practice guidance.

...

[228] The system as proposed in the March 2025 memorandum does not preclude industry undertaking audits of FEPs, but the auditors do need to be approved by WRC to ensure they have the required competencies.

[473] The JFP and Mr Pinnell's requests to amend the frequency and type of audits (random as opposed to scheduled) were not accepted by WRC.

[474] WRC submitted a revised version of PC1 dated 8 August in which certification and audit of FEPs for both permitted and consented activities was required to occur in accordance with a new Schedule D3. Schedule D3 required five yearly recertification and for audits:

- a. Unless otherwise specified in a resource consent, a farm operator must, not later than 12 months after the initial certification of their farm environment plan, arrange for an auditor to audit the farm against the actions specified in the action plan contained in the certified farm environment plan.
- b. Unless otherwise specified in a resource consent, a farm operator must also, arrange for a subsequent audit of the farm against the actions specified in the action plan within three years of the previous audit.

[475] In addition, certification and audits of permitted activities was required to recognise the FEP purpose in Part B of Schedule D1, additional FEP content in Part C of Schedule D1, the standards in Part C of Schedule D1, any relevant rule in Chapter 3.11, any other relevant Waikato Regional Plan provision and any applicable national regulation. FEPs for consented activities were required to recognise an equivalent list of additional requirements.

The September Judicial Telephone Conference and resulting directions

[476] On the morning of the JTC WRC proposed further amendments to Rule 3.11.4.3(7)(e).

[477] We confirmed that we accepted WRC's proposals to amend the Rule and to provide flexibility to extend the time for certification. However, it was clear from the parties' responses to the consultation document that they remained concerned

about other aspects of the FEP provisions and we required WRC to address a range of issues at the JTC.¹⁴⁷ At the JTC, the issue of resourcing to meet auditing requirements was also raised but remained an area of uncertainty.

[478] Ms Carruthers confirmed that changes provided earlier that morning had addressed WPL's concerns. All parties had the opportunity to address each agenda item, but by way of a generic summary, WRC did not see benefits in making further changes. Some matters remained unclear and the Court indicated that it needed to be satisfied that the provisions were going to work.

[479] We addressed FEPs in some detail in our post-conference minute dated 19 September relating to stock exclusion, including the need to be realistic in terms of what can be achieved in the 10-year term of PC1. We stated:

[121] There has been a lot of discussion about FEPs and what they must contain but to properly understand what they must do, we set out the relevant requirements of Schedules C and D1, which in combination require or will require demonstration of whole farm management practices and compliance with the following minimum standards for activities to be permitted: ...

[480] We do not repeat that list but as one example we noted that, indicatively, the average estimated cost of fencing streams on drystock farms with slopes of up to and including 15° as derived above could be \$135,000 per farm and more likely could be more, depending on the unit fencing rates at the time. We acknowledged and understood the concerns raised by Ms Ongley that farmers could simply say we cannot afford to do what PC1 requires. We stated:

[123] ... It must be determined farm by farm with assessment by an independent certifier approved by the Chief executive of WRC as meeting the stated qualification and experience requirements. There simply is no alternative. While there is a risk that more could possibly be required on any farm, setting unrealistic blanket requirements could result in less incentive to farmers to play their part. Getting the balance right will be the challenge.

[481] We went on to say:

¹⁴⁷ Court's Minute dated 27 August 2025 from [92].

[127] We are of the view that WRC must provide greater clarity as to what FEPS must cover to remove the uncertainty that clearly and understandably exists in the minds of the farming community. It is also necessary to ensure that all farms are treated the same, as far as that is achievable, and consent processing officers have clear directions to ensure consistent decision-making. We direct WRC to propose at least a framework for a guidance document that sets clearer parameters within which FEPs are to be prepared.

[128] As has been necessary for other aspects of PC1, we consider greater progress will be made if we set out preliminary ideas on what matters we consider might need to be considered. All parties should be given the opportunity to suggest matters to be addressed in the document, which should then be prepared in consultation with representatives of industry organisations and should include consideration of:

- (a) relevant matters from above, for example in relation to Schedule C(1)(b)(ii);
- (b) how far is it necessary to go in showing features on an aerial photograph that have little chance of being addressed in the first 10 years;
- (c) criteria for determining how much fencing must be provided, whether permitted or controlled activities; and
- (d) a framework within which the extent of all works, priorities and timing are to be determined to ensure the most appropriate combination of mitigation measures for the farm are adopted.

...

[130] Consideration needs to be given to remedies in the event of non-compliance with agreed programmes. Having reconsidered the appropriate frequency of FEP audits in view of the above updated evaluation, we agree with WRC that an audit after one year and again after another three years are necessary to ensure the expected progress is being made. We see merit in providing clarification in the provisions that if WRC is satisfied that acceptable progress is confirmed by the second audit, it will review the future frequency required.

WRC's further proposals and parties' responses

[482] WRC addressed the matters raised by the Court and responses to its consultation documents dated 17 and 20 October in its memoranda dated 31 October and 25 November. In the November memorandum it stated:

[57] The Court has suggested that, if acceptable progress is confirmed by the second audit, the provisions should enable WRC to review the frequency of future audits. WRC does not support this approach and is of the view that sufficient flexibility exists in the system to ensure audits are fit for purpose based on the compliance history of the farm. ...

[58] However, if the Court were of mind to endorse an approach that enabled WRC to review the frequency of future audits, WRC suggests that Part C of Schedule D3 could include wording ... to the effect of: ...

- c. Where two consecutive audits demonstrate full adherence with the action plan in the Farm Environment Plan, Waikato Regional Council may extend the timeframe for audit in subclause (b) by not more than 2 years having considered:
 - i. the importance of the ongoing actions in the action plan within the 5-year period to reduce the risk of diffuse discharges; and
 - ii. the presence of sensitive of receiving waterbodies, including any lakes and wetlands.

[483] While we agree with the matters raised by WRC about its functions and duties as the Regulator,¹⁴⁸ we consider that a formal provision that ensures a review of the frequency of audits within defined parameters ensures certainty will have resource management benefits. First, it will provide an incentive to ensure compliance with the FEP. Second, it is consistent with the emphasis that the Court places on ensuring that, as far as reasonably practicable, resources should be used for environmental improvements on-farm, not for unnecessarily high regulatory and monitoring costs.¹⁴⁹

[484] The Court does require a review provision to be included in PC1, but we question the need to include matters to be considered. If two consecutive audits demonstrate full adherence with an action plan, it is unclear what basis would be not to extend the period. The relevant matters to be audited should have been determined as appropriate by the certification process, including with respect to the presence of sensitive receiving environments. That is particularly the case for permitted activities which by definition have a low risk of diffuse discharges.

[485] Currently there is no statutory requirement for audits every three years and there is no certainty that will be a requirement in the future. We are satisfied that an initial audit after a year and a second after another three years remain appropriate,

¹⁴⁸ Memorandum of counsel for WRC dated 4 August 2025 Annexure A, at [223].

¹⁴⁹ First Interim Decision at [205].

but three-yearly after that will not necessarily be required. To ensure clarity, efficiency, effectiveness and workability of the provisions:

- (a) For permitted activities, the provision must read:

Where two consecutive audits of FEPs for permitted activities demonstrate full adherence with the action plan in the Farm Environment Plan, Waikato Regional Council will extend the timeframe for audit in subclause (b) by 2 years

- (b) For consented activities, the provision must read:

Where two consecutive audits of FEPs for consented activities demonstrate full adherence with the action plan in the Farm Environment Plan, Waikato Regional Council will extend the timeframe for audit in subclause (b) by 1 year and may extend it by a further year where implementation timelines have been demonstrably reduced compared to those set out in the action plan.

There should be no other matters to be considered.

[486] We note WRC's statement that the Director-General considered that the ability for WRC to allow a longer timeframe for CFEP certification is unlawful and seeks clear and objective criteria for any exemptions to the certification timeframe.¹⁵⁰ In response, WRC stated that its ability to extend a timeframe for certification under Rule 3.11.4.3(7)(e) could be limited to where a CFEP is unavailable or has not yet completed certification. Subject to our directions above, we agree with and accept WRC's proposed amendment, which would improve the certainty of the provision and limit the circumstances within clearly define boundaries.

[487] WRC addressed a range of other matters in accordance with directions in the post-conference minute, which we generally accept. We make no finding in relation to the cost of audits as there was an insufficient evidential basis to enable us to do so. However, we consider WRC's estimate is likely to be optimistically low, possibly

¹⁵⁰ Memorandum of counsel for WRC dated 31 October 2025 at [83](b), based on DOC's email response dated 24 October 2025, included in Appendix C of the memorandum.

significantly so for the first audit at least. We addressed the issue as far as we were able in our post-conference minute dated 19 September as follows:

[126] To satisfy the provisions as currently proposed, the initial FEP will need to address all of the above issues and be certified by a Certified Farm Environment Planner. That appears unlikely to be straight forward or low cost for an unknown number of farms. It will need to be audited twice during the first five years after PC1 becomes operative. All of these will involve additional costs, which based on the evidence, could be in the order of \$10,000 or more over the first five years and likely much more for some farms. For consented activities, additional costs will be incurred.

[488] Responses to the consultation documents from nine parties were included as Appendix C of the 31 October memorandum,¹⁵¹ the majority of which did not address Direction 22. Mr Pinnell's responses were comprehensive and prepared in consultation with Lochiel and farmers who had been engaged in the appeal as witnesses or as s 274 parties. He also addressed FEPs and audits in his responses to WRC's Consultation Document dated 19 November attached to its 25 November memorandum. He made similar submissions in his 19 November memorandum direct to the Court, which we took into account in the above evaluation.

[489] WRC's statutory obligations must be given appropriate weight and that is reflected in our final determinations. However, we agree with both Mr Pinnell and the JFP¹⁵² about the need for clarity of what is required, which we return to in Part C relating to guidelines but that is as far as we can go in relation to balancing the views of different parties. We noted the following submission from Mr Pinnell:¹⁵³

... An earlier exposure draft of a model FEP produced by WRC was enormously long and detailed, so much so that it was met by wholesale rejection by farmers attending meetings hosted by WRC. ...

[490] The importance of good, easy to understand guidelines cannot be overstated.

¹⁵¹ Beef and Lamb, Federated Farmers, WPL, Mr Pinnell, HortNZ, Fish and Game, the Director-General, Fonterra and Dairy NZ.

¹⁵² Memorandum of counsel for WRC dated 31 October 2025, Appendix C, JFP response to WRC consultation document dated 24 October 2025 at [24].

¹⁵³ *Ibid*, Mr Pinnell's response to WRC consultation document dated 19 November 2025 at [68].

[491] WRC is an experienced regulator and, ultimately, it is WRC's plan to administer. Whatever parties may consider the original intent of FEPs to be,¹⁵⁴ they have been agreed by all parties as the key mechanism for implementing PC1 and an appropriate level of regulatory overview must be undertaken. We are satisfied that what is proposed is appropriate, subject to the further directions included in this Decision.

WRC's proposed provisions in PC1 Final

[492] Schedules D1, D2 have been modified significantly from the Decisions Version and a new Schedule D3 relating to the FEP certification and audit processes is included in PC1 Final. We do not address them in detail as they generally satisfy Direction 22 and related subsequent directions, subject to the matters set out in the following paragraphs and our findings in relation to guidelines in Part C.

[493] We note the proposed amendment to new clause Part C(3)(e) in Schedule D1 (and equivalent in Schedule D2), which was first proposed in WRC's memorandum dated 27 March 2025. It is an addition to the Decisions Version, reproduced from the revoked Part 9A and was included at the suggestion of the Waikato and Waipā River Iwi based on the meaning of the catchment context as defined in r 4 of the Farm Plan Regulations, which states:

In these regulations, unless the context otherwise requires, catchment context, challenges, and values includes the following information (without limitation) in relation to a local area:

- (a) ...
- (b) identified cultural matters of importance to tangata whenua, including—
 - (i) the cultural significance of the local area; and
 - (ii) the traditional names of freshwater bodies in the local area; and
 - (iii) sites and species in the local area that are significant to tangata whenua:

¹⁵⁴ Memorandum of counsel for WRC dated 31 October 2025, Appendix C, Mr Pinnell's response to WRC's consultation document dated 24 October 2025 at [41].

[494] WRC agreed that the information should be provided in accordance with Method 3.11.3.6. and PC1 Final includes it as information that WRC will make available as part of the catchment context. It is consistent with Part 2 of the RMA and Te Ture Whaimana, and its proposed inclusion was not opposed by any party in response to WRC's 27 March memorandum and we accept it.

[495] However, while Schedules D1 and D2 refer to the fact that “the location of identified cultural matters of importance to tāngata whenua that will be addressed through farm actions”, it is unclear how that will occur. When WRC receives relevant information, it will need to be included as part of catchment context information provided for the relevant sub-catchments, so that it can be taken into account in subsequent FEP and resource consent processes. Further, WRC will need to provide clarity for farmers, CFEPs, consent officers and compliance officers to ensure consistency in the way that farm actions are to be undertaken to address cultural matters.

[496] Prior to finalisation of PC1, WRC is to clarify how relevant information will be applied practically, when that information is received. Also, how that information will be taken into account in FEPS and what farm actions may be necessary to address cultural matters. Detailed information will need to be set out subsequently in guidelines.

Summary of findings in relation to Direction 22

[497] We stated in the First Interim Decision¹⁵⁵ that there is general agreement among parties that both certification and auditing are important. We agreed, subject to the processes being efficient and effective. As stated in our 19 September minute, we agreed with WRC that an audit after one year and again after another three years are necessary to ensure the expected progress is being made, and we have no reason to revisit that. We have directed a change to the provisions to reduce the subsequent frequency of audits where full adherence with the action plan in the FEP

¹⁵⁵ At [875].

is demonstrated. Provisions relating to the frequency of audits are to amended as set out above for permitted and consented activities.

[498] Certification and audits will be a key interface point at which farmers and regulation under PC1 come together, possibly for the first time on the farm, and provide the opportunity to develop positive relationships and trust. They could also become a focus of dissatisfaction if that opportunity is not taken. Appropriate guidelines prepared by WRC in consultation with farming representatives will be key and we return to them in Part C.

[499] The costs of compliance have been an important consideration for the Court through all parts of the appeals process, and while we share Mr Pinnell's concerns about WRC's estimate of the cost of audits is likely to be low, we are satisfied that the PC1 Final provisions and the costs of meeting them are both necessary and appropriate.

Scope

[500] Federated Farmers' appeal sought that the review of actions on farm against FEPs ought to be reasonable and cost effective provides scope. WRC considered there is scope to make its proposed changes relating to industry schemes¹⁵⁶ and we accept that. Further, the amendments proposed by the Court are consequential to the adoption of a risk-based approach throughout PC1.

Direction 23: Critical source areas (CSAs)¹⁵⁷

[501] Direction 23 required WRC to:¹⁵⁸

Address the matters relating to critical source areas and provide a visual guide to be included by reference in PC1 as a guide to plan users from the time PC1 becomes operative

¹⁵⁶ Memorandum of counsel for WRC dated 4 August 2025, attached consultation document at [231]-[232].

¹⁵⁷ First Interim Decision at Part F22; WRC memorandum dated 4 August 2025 from [220] and attached consultation document from [234].

¹⁵⁸ First Interim Decision at [1184].

The issue

[502] Critical source areas (**CSA**) were the subject of considerable attention through the appeal hearings and farmers were very concerned about how they would be identified. CSAs come in many shapes and sizes and can be significant contributors to contaminant losses from farms. They are difficult to describe in planning documents and we were concerned that there would be room for very different interpretations by different farmers, CFEPs and consent and compliance officers without much clearer guidance than provided by PC1. In closing, the JFP aptly referred to them as “like an elephant, difficult to describe but you know one when you see one”.

[503] Key issues were the definition of CSAs, what CSAs need to be mapped and to what extent mitigation will be required in the term of PC1. They are described in Part F22 of the Interim Decision and not repeated here, other than to record:

[886] The Joint Farming Parties made a drafting note that the definition should include reference to guidance documents or photographs as appropriate. We share that view as we found WRC’s document identified as Exhibit 6 in the Court record, “Critical source areas” provided a good example of “a picture is worth a thousand words” and will direct WRC to submit an appropriate guidance document for consideration by the Court to be included in PC1 by reference.

[887] While we acknowledge the concern raised by the farming parties about the difficulty of mapping critical source areas, we consider appropriate mapping to be an essential starting point for a longer-term process to effectively manage them. The first step would be to identify areas with the greatest potential to generate run-off with high contaminant loads and we do not accept that would be a difficult or onerous task for farmers familiar with their land.

[888] Practically, the focus should be on these areas as it will not be possible to address all critical source areas within the term of PC1. ...

[889] As discussed in Part F17, if an ephemeral stream presents a significant risk of discharges of any of the primary contaminants, it could be considered as a critical source area and managed accordingly. The same could apply to unfenced drains.

[504] We note that WRC addressed CSAs in some detail in its memorandum dated 27 March. It had a similar view to the Court that the CSAs to be mapped would be those that are obvious and easy to identify on the farm. It is not expected that the

task need be an onerous one. The farmer would likely already know the location of CSAs on the farm.¹⁵⁹ At the time, WRC had not considered what advice will be provided to farmers about the scale of maps to be provided with the FEP and stated that it must undertake further work to confirm it.

[505] In the First Interim Decision, we suggested the following possible rewording of Policy 2B(g)(i) for consideration by WRC to provide improved understanding of what CSAs are:

[881] ...consideration could be given to rewording the identification and management of “land most vulnerable to diffuse discharges of nitrogen, phosphorus, sediment and microbial pathogens, which for the purposes of PC1 includes critical source areas for overland flow...”

Substantive responses to the First Interim Decision

[506] In the consultation document attached to its memorandum dated 4 August, WRC agreed that the suggested amendment to Policy 2B(g)(i) was helpful and improved the alignment between the policy direction and the directions in Policy 4 regarding FEPs. It proposed an amended definition of CSAs in response to matters raised by the Court and received from parties.¹⁶⁰ Fish and Game was concerned using the phrase “concentrations significantly above average” may raise problems in implementation and suggested a further amendment to the definition.¹⁶¹ Following discussions at the JTC about different iterations of the definition, we accept the following definition, which is included in PC1 Final:

Critical source areas: For the purposes of Chapter 3.11, means a landscape feature on farm such as a gully, swale or depression, or infrastructure feature such as a silage pit, fertiliser storage area, gateway, race, stock camp or water trough that –

- a. accumulates surface runoff comprising nitrogen, phosphorus, sediment or microbial pathogens from adjacent land and where the contribution of those contaminants is disproportionately high compared to that typical for the farm-due to the farming activity at that location; and

¹⁵⁹ Memorandum of counsel for WRC dated 27 March 2025 at [69].

¹⁶⁰ Memorandum of counsel for WRC dated 4 August 2025 from [222].

¹⁶¹ Memorandum of counsel for Fish and Game dated 15 August 2025 at [7].

- a. is linked to downstream surface waterbodies through ephemeral flow paths.

Note. A guide to the identification of critical source areas will be made available on the Council website and may be updated from time to time.

[507] To provide improved clarity on what mapping of CSAs was required, WRC proposed the amendments to Schedule D1 Part C(3)(h) and Schedule D2 Part C(2)(h). Further iterations were proposed at other times, with the following version included in PC1 Final, which we accept:

The location of critical source areas for which mitigation measures will be implemented within 10-years of Chapter 3.11 becoming operative, and any major areas of actively eroding soil; and

Our findings in relation to CSAs

[508] We find that Direction 23 has been met and that the above definition of CSAs and their mapping and mitigation requirements are the most appropriate to provide the greatest clarity possible for all parties, following a thorough consideration of alternatives.

Direction 24: Intensive winter grazing¹⁶²

[509] Direction 24 required WRC to:¹⁶³

Respond to matters raised in relation to intensive winter grazing in Part F23.

Definition

[510] Intensive winter grazing (**IWG**) is defined in PC1 as meaning the grazing of livestock on an annual forage crop at any time in the period that begins on 1 May and ends with the close of 30 September of the same year, as section 3 of the Resource Management (National Environmental Standards for Freshwater) Regulations 2020 (**NES-F**).

¹⁶² First Interim Decision, at Part F23; Memorandum of counsel for WRC dated 4 August 2025 from [230], and attached consultation document from [249].

¹⁶³ First Interim Decision at [1184].

The issues

[511] We addressed IWG in Part F23 of the First Interim Decision, setting out our summary of the evidence and our preliminary evaluation of it. We expanded on Direction 24 in the body of the decision. Key issues included appropriate rules, appropriate conditions for managing IWG, appropriate land slope for IWG and appropriate buffer widths from water bodies. We stated in the decision:

[903] For the avoidance of doubt, we note that s 6(1) of the NESFW provides for a regional rule or resource consent to be more stringent than the regulations.

...

[919] We are satisfied based on the evidence that winter grazing can present significant risks of diffuse or overland flow discharges of the four primary contaminants and that the risks increase as land slope increases. As the Hearing Panel stated “[t]he grazing of winter fodder crops is a recognised high-risk activity with respect to the loss of sediment, bacteria, P, and N to water.”

...

[925] Our current view is that intensive winter grazing on any land with a slope greater than either 10° or 15° should require a restricted discretionary or discretionary resource consent, but WRC will need to consider but not be necessarily limited to both options as part of a s 32AA evaluation to confirm the slope at which this requirement should apply and the appropriate minimum buffer width. As part of the evaluation, the provisions relating to land with a slope between 10° and 20° require consideration of a number of matters, including:

- (a) indicatively, the area of land greater than 10° and up to 20° exceeds 100,000 ha, [approximately 10% of the PC1 area] which suggests that without effective controls on intensive winter grazing, effects on the environment could be significant and contrary to the objectives of Te Ture Whaimana; and ...

...

[927] WRC is also to propose provisions to manage intensive winter grazing on slopes exceeding 20°, and the most appropriate activity status.

The effects of changes to the NES-F

[512] Prior to the issue of the First Interim Decision, WRC addressed IWG in some detail in its memorandum dated 27 March 2025. It started by noting Fish and Game’s concern that “IWG rules have not been retained as a minimum standard”

and explained that the reason was “because WRC proposed to remove the winter forage crop provisions in favour of relying on the intensive winter grazing provisions from the NES-F”.¹⁶⁴ After amendments were made to the NES-F provisions relating to IWG in the Resource Management (Freshwater and Other Matters) Amendment Act 2024,¹⁶⁵ WRC considered that created a regulatory gap in the PC1 provisions and that:

[60] ...

- (a) The combination of these changes has increased the risk of contaminant losses from intensive winter grazing to fresh water, with the potential to adversely affect water quality.
- (b) The removal of the requirement for FEPs to ensure minimum farming standards with respect to intensive winter grazing is a concern. Of particular concern is the removal of limits on slope of land that can be used for intensive winter grazing, the limits on the area of the farm that can be used for intensive winter grazing, and the reduction in setback from waterways.
- (c) ... the inclusion of specific intensive winter grazing provisions would better ensure that losses from intensive winter grazing (which potentially have a significant impact) will be minimised.

Substantive responses to the First Interim Decision

[513] WRC addressed IWG comprehensively in the discussion document accompanying its memorandum dated 4 August, having taken into account feedback from other parties to that time. It commented in the discussion document as follows:

[255] WRC notes that the PC1 Council decision was released before the NES-FW provisions were gazetted. Appeals therefore could not respond to these NES-FW provisions, ...

...

[268] WRC considers that it would generally not be appropriate to permit intensive winter grazing on land steeper than 10° even if other permitted

¹⁶⁴ Relying on Mr Trebilco’s evidence.

¹⁶⁵ The amended provisions were significantly less onerous and limited to (a) a 5-metre buffer strip between intensive winter grazing and any river, lake, wetland, or drain; and (b) no intensive winter grazing of critical source areas and maintenance of vegetated ground cover in critical source areas.

activity conditions are imposed. It probably is reasonable to allow intensive winter grazing on land over 10° through a consent process that can ensure the particular risks related to the intensive winter grazing have appropriate consent conditions to manage the risk. Conditions may need to address a number of the farm specific risk factors noted above by Ms McArthur. There may for example need to be restrictions on particular locations of intensive winter grazing on the farm, stormwater runoff controls and so on. But these need to be determined on a farm-by-farm basis, not as standard conditions in rules or schedules. [We address WRC's specific proposals below].

[269] Based on the evidence and comments discussed above, WRC does not consider that increasing the buffer width for land between 10° and 20° slope would adequately manage effects in a way sufficient to allow the activity as a permitted activity.

[270] ... WRC does not support wider buffers.

...

[279] ... WRC considers that it would be appropriate to permit intensive winter grazing on slopes 10° and less, subject to appropriate standards and conditions. However, WRC also understands from further discussions with farming parties, that there should be some small area of land above 10°, but no steeper than 20°, where permitted intensive winter grazing can occur. This is in recognition of the fact that land slope varies and that even within an area of land generally below a slope of 10°, there will invariably be some parts with somewhat steeper slopes. WRC therefore accepts that it would be reasonable to permit intensive winter grazing on slopes 10° and less, and on no more than five hectares of land with slopes greater than 10° but less than 20°. The figure of five hectares was devised through a discussion with a WRC farm system expert and is considered sufficient to provide reasonable flexibility in the provision, while limiting potential additional effects. However, actual locations of intensive winter grazing, and appropriate mitigations, should be addressed in the FEP.

...

[283] WRC is not proposing to reestablish standards in Schedule C with respect to intensive winter grazing. If such standards were re-established, farmers who fail to meet the standard would be required to get a discretionary consent under rule 3.11.4.7. WRC considers that farming which does not meet the permitted standard in Schedule D1, would be able to manage intensive winter grazing through controlled activity Rule 3.11.4.4. WRC considers that it would not be appropriate for that one standard to mean that a particular farm cannot be authorised by a consent under Rule 3.11.4.4.

[284] ... the Court supported a minimum buffer zone of 10 m for permitted intensive winter grazing. WRC agrees that that is the appropriate buffer zone.

[514] WRC proposed the following amendment to Schedule D1, Part C(5) to include the following new standard for permitted activities:

[231] ...

No more than five hectares of intensive winter grazing on a property occurs on land over 10° slope, and no intensive winter grazing occurs on land over 20° slope.

[515] WRC summarised responses in its memorandum, including the following of particular relevance to our determination:

[235] The parties responded to WRC as follows:

- (a) The JFP generally support WRC's proposal for intensive winter grazing but consider parts need to be amended as proposed by Mr Pinnell, including that the permitted slope limit is 15 degrees and that the required buffer is 5 metres.
- (b) The JFP state that if WRC or the Court do not agree with Mr Pinnell's proposal, there should be an area limit of 5 ha which applies above 15-degree slopes (rather than WRC's 10 degrees).
- (c) ...

[516] From our own review of the responses, we note that the JFP agreed "with WRC that winter forage crop grazing which does not comply with the permitted activity standards should be a controlled activity and no upper slope limit or minimum setback distance should apply".¹⁶⁶ They stated that:

[80] ...

- (a) Winter forage crop grazing in the Waikato occurs on significantly less land area than regions like Canterbury, Otago and Southland:
 - i ... only two of the drystock farms in Beef+Lamb NZ's economic services database (a small but reasonably representative database of 36 farms in the PC1 Catchment) graze cattle on a winter forage crop.
 - ii In 2023 it was estimated that 1,846ha in the Waikato was used for winter forage crop grazing (cf 62,056ha, 22,857ha and 18,070ha in Canterbury, Otago and Southland respectively).
 - iii This is not to say that there should not be controls on the activity but it is to say that the activity does not appear to be a "key" contributor towards the sediment and phosphorus

¹⁶⁶ JFP response to WRC's 11 July consultation document dated 25 July 2025 at [79](d).

problems in the catchment, and this should inform the nature and extent of standards placed on the activity.

- (b) The climate in the Waikato is very different from Canterbury, Otago and Southland. Unlike those Southern regions (where there is no grass or crop growth during the winter months and rainfall is a lot higher), the warmer climate in the Waikato means that there is continual growth and it is less likely that crops are grazed down to bare soil.

[517] While accepting that, our evaluation must consider the evidence before us in the round. There is still a requirement to manage the risk and there is the potential for the situation to change in the future. We also noted the JFP's submission at [80](d) that the activity occurs in pockets, rather than being widespread throughout the PC1 Catchment, which we do not consider to be a reason to justify lesser management requirements for the relatively small number of farms that would trigger the need for a consent.

[518] While we also reviewed and noted the matters raised in Mr Pinnell's memorandum to WRC and proposed amendments to the provisions, we find that WRC's proposed provisions better achieve the purpose of the RMA and the objectives of PC1.

The September Judicial Telephone Conference and resulting directions

[519] In our pre-conference minute, we agreed with WRC that controlled activity status is appropriate for activities that cannot meet the permitted activity standards. IWG was discussed at the JTC and as a result, an advice note was added in response to a submission made by Mr Pinnell that farm plan actions are expected to meet or exceed industry guidance relating to the topic. The amendment is included in PC1 Final, which in other respects remains as the version submitted with WRC's 4 August memorandum.¹⁶⁷

[520] No further changes were proposed or requested in subsequent memoranda from WRC and other parties.

¹⁶⁷ Memorandum of counsel for WRC dated 31 October 2025 at [109].

Our findings in relation buffer width

[521] We confirm that the buffer width is to remain at 10 metres, as stated in the First Interim Decision.¹⁶⁸

Plan provisions relating to slope and consent activity status for winter grazing of forage crops and sacrifice paddocks

[522] With regard to slope, for activities to be authorised on a farm greater than 20 ha in area under Permitted Activity Rule 3.11.5.2 of the Notified Version, no part of the property or enterprise over 15 degrees slope could be cultivated or grazed. Schedule 1(2)(d) of the Notified Version, which applied to all farming activities, including permitted activities, required FEPs to include:

An assessment of appropriate land use and grazing management for specific areas on the farm in order to maintain and improve the physical and biological condition of soils and minimise the diffuse discharge of sediment, nitrogen, phosphorus and microbial pathogens to water bodies, including:

...

(iv) the appropriate location and management of winter forage crops; and

[523] The Council Hearing Panel's Recommendation Report stated:

[1701] The grazing of winter fodder crops is a recognised high-risk activity with respect to the loss of sediment, bacteria, P, and N to water. Historically, but less widespread, this practice has increased with off-farm dairy grazing where some instances of poor site selection has occurred.

[1702] Slope is known to exacerbate the risk of contaminant run-off, particularly during periods of high rainfall and when soils are saturated and infiltration capacity is low. Given the high risk of contaminant loss associated with the grazing of winter crops, it is considered appropriate to limit the slope of the land used for this activity.

...

[1548] In addition to the standard set out above, standards have also been included in Schedule 3 relating to the use of sacrifice paddocks and the grazing of winter forage crops. These include retaining a 10 metre un-grazed vegetated buffer adjacent to any waterbody where an area

¹⁶⁸ At [924].

is to be utilised for winter forage crop grazing or as a sacrifice paddock;

[524] The standard referred to slope limits for stock exclusion but not for the grazing of winter forage crops or sacrifice paddocks. Schedules C(8) and D1 Part C(5)(b) of the Decisions Version required land adjacent to a Clause 5 waterbody being used for grazing of a winter forage crop or as a sacrifice paddock to have a 10 metre buffer strip. However, The Decisions Version sets no limitation on slopes at which these activities were permitted, which we consider to be a significant omission.

[525] As noted above, we stated in our preliminary evaluation in the First Interim Decision:

[919] We are satisfied based on the evidence that winter grazing can present significant risks of diffuse or overland flow discharges of the four primary contaminants and that the risks increase as land slope increases. ...

[526] WRC's response in the consultation document attached to its 4 August memorandum included:

[289] WRC has addressed many aspects of this [925] above when discussing appropriate slope and buffer zone for permitted intensive winter grazing under rule 3.11.4.3. This includes matters relevant to a S32AA evaluation. Overall, WRC concluded that it is appropriate to permit intensive winter grazing through rule 3.11.4.3 if:

- Generally, intensive winter grazing occurs on land with a slope of 10° or less, and no more than 5 ha on land over 10° and less than 15°,
- There is a non-grazed buffer zone of 10m between intensive winter grazing and water bodies,

...

[298] The last remaining question is whether there should be an upper slope limit for intensive winter grazing regulated by the controlled activity rule. WRC considers that there should be no upper limit for intensive winter grazing allowed through Controlled Activity Rule 3.11.4.4. As stated above, it would be very difficult on the available information to justify any particular upper limit. ...

[299] In terms of s 32AA, regulating intensive winter grazing on land over 10° slope through the Controlled Activity Rule would not add to costs to farmers who already need their farming operations authorised by Rule 3.11.4.4. As the risk of diffuse discharges of nitrogen, phosphorus, sediment and microbial pathogens can be appropriately managed through this rule, WRC considers this to be the most appropriate way to achieve the objectives.

[527] Taking all of the above factors into account, we find that the amended provisions in PC1 Final relating to slope and consent activity status for winter grazing of forage crops and sacrifice paddocks are the most appropriate to meet the objectives. In particular, we agree with WRC that all activities that do not meet the permitted activity standards and conditions are controlled activities.

[528] We accept the proposed amendments to Schedules C and D1 but note that the definition of “forage” has been deleted, so its use in Schedule C needs to be replaced by “sacrifice paddocks and intensive winter grazing” to be consistent with Schedule D1 and the Court’s directions.

Scope

[529] In relation to scope, WRC stated in the consultation document attached to its 4 August memorandum that it considered:

[287] ... that there is not clear scope to bring the repealed NES-FW winter grazing provisions into PC1 and this may not be supported by some PC1 parties. WRC does however have some comfort that PC1’s FEP process would allow for further controls on intensive winter grazing appropriate to particular farms.

[530] Schedule C of the Decisions Version required a 10 m vegetated buffer from a clause 5 waterbody when land was used for the grazing of a winter forage crop (from 1 June to 1 September) or as a sacrifice paddock. The Decision was publicly notified on 22 April 2020, prior to the 3 September 2020 commencement date of the NES-F. Hence, the 10 m buffer was determined as appropriate by the Hearing Panel independent of any national regulations.

[531] The Court independently determined that a 10 m buffer is appropriate and no issues of scope arise in relation to buffer distance.

[532] In relation to slope, the second major component of the IWG provisions, Clause 24(4)(b) of the 2020 NES-F, required that the mean slope of a paddock that is used for IWG must be 10 degrees or less. While we noted the provision at [897] in the First Interim Decision, it was not a factor taken into account in our determination that, for IWG to be permitted, the slope needs to be 10 degrees or less. That was made based on the evidence before us, which was compelling.

[533] We were and remain satisfied that on slopes above 10 degrees, the risk of diffuse discharges of the primary contaminants to water increases to the point where it cannot be authorised as a permitted activity and must be subject to increased regulatory oversight by way of a consent process (except in relation to the 5 ha referred to above). This is reinforced by the requirements of s 70 of the RMA. In requiring increased regulatory oversight, we have accepted that controlled activity status is appropriate, which is the least restrictive option and means that consent cannot be refused if the appropriate matters of control are met.

[534] We are satisfied that no issues of scope arise from our determination relating to slope.

[535] The proposed amendment to Schedule C(5)(a) in PC1 Final referring to where any paddock adjoining the waterbody is used for break feeding, grazing on annual forage crops or grazing on pasture that has been irrigated with water in the previous 12 months is from the Version of the Resource Management (Stock Exclusion) Regulations 2020, current as at 25 October 2024. As the Regulations are current at the time of this Decision, we accept the amendment and that no issues of scope arise.

Direction 25: Definitions of “property”, “enterprise” and “single operating unit”

[536] This is addressed at the same time as Direction 3.

Direction 26: Rule 3.11.4.9

[537] Direction 26 required WRC to:¹⁶⁹

Reinstate the 10-year moratorium in Rule 3.11.4.9 and clarify that the rule does not apply to TWAL.

[538] The Hearing Panel removed the moratorium, but the reason was unclear to the Court from the Recommendation Report. Based on the evidence and submissions before the Court, we understood there was no scope for the removal.¹⁷⁰

[539] WRC addressed the issue in its memorandum dated 27 June 2025, first explaining that the word “moratorium” was introduced by WPL in submissions and that:

[17] ... that term is not entirely apt because the rule still allows applications to be made. The 10-year time frame is an end date for the rule. The effect of removing the end date is that the rule would be effective until the plan is changed, while putting it back in means the rule would cease to be effective after 10 years. This means that there would be no rule requiring resource consent for land use change after the end date.

[540] In the same memorandum, WRC advised that removal of the end date was requested in Federated Farmers of New Zealand’s submission on Variation 1 to PC1. We accept that is the case.

[541] In view of that background and there being scope, we accept that removal of the end date is appropriate and revoke our direction that it be reinstated.

Direction 27: Alternative models to Overseer¹⁷¹

[542] Direction 27 required WRC to:¹⁷²

¹⁶⁹ First Interim Decision at [1184].

¹⁷⁰ First Interim Decision at [974] and [1049].

¹⁷¹ First Interim Decision at Part F25; Memorandum of counsel for WRC dated 4 August 2025 from [244], and attached consultation document from [303].

¹⁷² First Interim Decision at [1184].

Reinstate clause A3(a) of Schedule B to allow alternatives to Overseer to be used to demonstrate a reduction in contaminant loads, not as a gateway; to remove the requirement for modelling results to be comparable to those of Overseer, to consider the matters raised in the appeals by WRC and Ballance and to provide an alternative method of monitoring nitrogen losses from CVP activities.

The issue

[543] In Part E16 of the First Interim Decision we found, after a comprehensive consideration of alternatives, that Overseer remains the most appropriate of the available tools to monitor changes in nitrogen loss risk from dairy farms with more than a low risk of diffuse discharges of the primary contaminants. However, the evidence before the Court was that the use of Overseer for CVP is problematic, unsuitable for use with certain crops and can be high cost, but no definitive alternative was proposed to the Court. In Part F25 we identified the need for WRC to provide an alternative method of monitoring nitrogen losses from CVP activities.

[544] As noted under Direction 13, we agreed there was also a need to provide an alternative to Overseer for monitoring nitrogen losses from drystock activities, which must also comply with the reinstated alternatives provision.

[545] WRC amended the relevant provisions in the Decisions Version to remove the option to use alternatives to Overseer, but this was not supported by a reasoned evidential basis or a s 32AA evaluation and was outside the scope of the appeals.

[546] Overseer now has no role in determining consent activity status for different farming activities, meaning there is no longer a need to provide for alternatives for that purpose. We have already determined that the NRS can be used as an alternative to Overseer as a tool to assist understanding, assessing and managing the risk of diffuse discharges from CVP and drystock activities, subject to our findings in relation to Direction 18 and 13 respectively. We addressed the use of alternatives to Overseer for dairy farms with more than a low risk of diffuse discharges in considerable detail in the First Interim Decision and found that Overseer was the most appropriate to meet the objectives.

[547] For completeness, we note that we set out relevant background to matters relating to alternatives to Overseer from dairy farming activities with more than a low risk of diffuse discharges in Part E of the First Interim Decision.

Substantive responses to the First Interim Decision

[548] In relation to the use of alternative models to Overseer, WRC stated in the discussion document attached to its 4 August memorandum:

- [63] Direction 27 requires clause A3(a) of Schedule B to be reinstated to allow alternatives to Overseer to be used to demonstrate a reduction in contaminant loads. Note that the Decisions Version of PC1 included a number of other requirements with respect to an alternative model to Overseer (i.e. in addition to those in clause A3(a)). The Interim Decision does not specifically address whether other parts of Schedule B that address the use of alternatives to Overseer should also be reinstated. However, WRC considers that if the provision for use of alternative models is reinstated, all relevant original provisions need to also be reinstated. Reinstating all relevant parts of Schedule B that address the use of alternatives to Overseer would be consistent with the Decisions Version.

[549] WRC proposed new or amendments to existing methods, rules and schedules in its discussion document and proposed further amendments to some of them over time after considering responses from parties. In its amended version of PC1 dated 8 August, which responded to the First Interim Decision, WRC proposed the following new clause in Schedule B:

C. A nitrogen leaching risk analysis established via an alternative, approved model.

1. Alternative models may be used provided a suitably qualified and experienced nutrient loss modeller can demonstrate and has certified to WRC that the model:
 - a. has been developed through a robust review and quality control process;
 - b. has appropriate supporting documentation, user guides and input standards.
 - c. can appropriately assess the nitrogen leaching risk from the farming operation.

[550] In its response to WRC, Fish and Game expressed concerns about difficulties in showing that an alternative model “can produce comparable modelling outputs to those of Overseer” and that approvals of tools alternative to Overseer would leave an inappropriate degree of discretion to the Chief Executive of the WRC, without going through the First Schedule process.¹⁷³ In its subsequent memorandum dated 15 August to the Court, Fish and Game expressed similar concerns about leaving an inappropriate degree of discretion to the Chief Executive but did not propose specific amendments:

[9] ... because Fish & Game’s position at the hearing was that the Decisions Version wording in Schedule B requiring comparable modelling results to Overseer (as in the Decisions Version) should be retained, and the Court’s Interim Decision rejected this.

[551] No other parties responded to WRC. In a separate memorandum to the Court, HortNZ suggested that its CVP NRS be accepted as an alternative model, which we addressed under Direction 18. The JFP addressed alternatives to the use of Overseer for drystock farms a separate memorandum to the Court, which we addressed under Direction 13.

The September Judicial Telephone Conference and resulting directions

[552] In our pre-conference minute, we stated in relation to Direction 27:

[117] This related to alternative models to Overseer and we directed that the provision must be reinstated. However, as noted in relation to Direction 5, it should be made clear in Schedule C that alternatives to Overseer, and to the new method of estimating nitrogen loss risk from CVP/drystock activities, that any alternatives will only be permitted if they are demonstrated to provide greater certainty of representation of risk than Overseer or the specified CVP/drystock analysis method. This will need to be independently peer reviewed by an appropriately qualified and experienced person.

[553] Just prior to the JTC,¹⁷⁴ WRC proposed adding the following sub-clause to proposed Schedule B(C)(1):

¹⁷³ Memorandum of counsel for Fish and Game dated 25 July 2025 at [10].

¹⁷⁴ Emailed tracked changes on 2 and 3 September 2025.

d. provides at least a comparable representation of risk of nitrogen leaching loss to Overseer or the Nitrogen Risk Scorecard.

[554] At the JTC, WRC raised the issue of whether an independent peer review of alternative models by a CFEP was required. Mr Conway noted that the Hearing Panel did not consider that appropriate because while a CFEP might run an alternative model, that is a very different skill to determining if an alternative model is appropriate. For that reason, he stated that the Decisions Version requires certification to WRC by a suitably qualified and experienced nutrient loss modeller.¹⁷⁵

[555] Ms Buxeda sought clarification of whether B(C)1 would apply to alternative methods relating to CVP activities, stating that “if we just need to go through 3B and that proves the risk of nitrogen leaching, that to me seems appropriate and workable”.¹⁷⁶

[556] Ms Ongley noted Fish and Game’s primary position as stated in its earlier memoranda that leaving this discretion to WRC’s Chief Executive was inappropriate and that sort of decision should go through the First Schedule process. She also stated that reference to the nitrogen risk score card was opposed for obvious reasons that were outlined at hearing.

[557] In response to Ms Buxeda’s question, Commissioner Hodges indicated that “taking the method put forward as at face value for the moment, and we’ve got to discuss this more formally as a Court, but my expectation is that if we approve a new method that will be the method to be used by CVP consistently through all operations until an alternative is approved. He reserved comment on the approval of alternatives but referred to issues that need to be tightened up, which we address in this Decision.

¹⁷⁵ Transcript, at page 74.

¹⁷⁶ Transcript, at page 75.

[558] In response to Ms Ongley’s concern, Mr Conway indicated that the approval of the Chief Executive would need to be on the basis of certification provided to it by a suitably qualified modeller.

[559] In our post conference minute dated 15 September, we accepted the proposed addition to Schedule B(C)(1), subject to the additional words highlighted:

[78] ...

- d. provide at least a comparable representation of risk of nitrogen leaching loss to Overseer from activities with more than a low risk of nitrogen discharges and to the Nitrogen Risk Scorecard from activities with a low risk of nitrogen discharge.

[560] We went on to say:

[79] An equivalent provision is to be included in relation to any proposed alternatives to the methods of monitoring contaminant loss from CVP and drystock activities.

[80] We would have serious reservations if the intention were that individual consent applicants can propose their own alternative method as that could introduce a range of disparate methods, making comparisons difficult if not impossible. Our current view is that any such alternative would need to be part of a certified industry scheme. We direct WRC to confirm how it anticipates such a provision would be used.

WRC’s further proposals and parties’ responses

[561] In its memorandum in response dated 30 October, WRC noted that the inclusion of the NRS was an error and proposed that the provision be amended to “provide at least a comparable representation of risk of nitrogen leaching loss to Overseer”. However, it stated Fonterra and Dairy NZ identified potential implementation challenges and argued that the requirement to “do the same as Overseer” should be removed. WRC required time to consider this further and advised that it would update its position. PC1 Final retains the wording above.

[562] Responses of Mr Pinnell, Lochiel and Fish and Game to the November draft version of PC1 were included in Appendix A of WRC’s memorandum dated 1 December but they did not address this proposal.

Our final evaluation and findings

[563] We start by observing that, having been satisfied late in the appeals process that the use of NRS as a tool to assist understanding, assessing and managing the risk of diffuse discharges from CVP and drystock activities is appropriate, the need for alternatives to Overseer is now relevant only to dairy farming activities with more than a low risk of diffuse discharges.

[564] It is of concern that the move away from a common method of managing discharges from different activity types in PC1 may present serious difficulties in future plan changes because of a lack of consistency in data gathering. However, there were valid reasons for the changes and it will be for WRC to determine how to address any disparities moving forward. The focus of our determination must now be on addressing alternatives to dairy farming activities with more than a low risk of diffuse discharges.

[565] With specific regard to those activities, various proposals for comparing nitrogen losses modelled using Overseer and possible alternatives have been considered through the PC1 process to date. It has been clear for some time that there is currently no method available to compare the quantities of nitrogen losses estimated using Overseer and alternatives such as an NRS. They have few, if any, common elements that would allow comparison. The disparity in results was clearly illustrated by our analysis and evaluation in Part E18 of the First Interim Decision. It is for these reasons that Direction 27 required the removal of the requirement for modelling results to be comparable to those of Overseer because it cannot be demonstrated.

[566] However, WRC's proposal in PC1 Final retains the requirement, which we initially considered to be appropriate and because no party has proposed any better alternative. However, it would not be in any party's interests, nor appropriate in terms of sound resource management practice, to include a requirement that is incapable of being demonstrated and, on more detailed consideration, we direct that the requirement be removed. The extensive consideration given by all parties, the Council Hearing Panel and the Court over many years has not resulted in a method

being found that can be included in PC1 to set workable provisions that would enable alternatives to Overseer as a tool for managing nitrogen discharges from dairy farms with more than a low risk of these discharges to be considered at the present time.

[567] It would not be acceptable to further delay PC1 becoming operative until such a method is found. Schedule B(C)(1)(a) in PC1 Final must be amended to incorporate the requirements for any alternatives to Overseer to be approved as set out under Direction 13. Any future alternative method would need to satisfy those requirements.

[568] As part of our finding relating to the amendments required in accordance with Directions 13, individual templates must be provided for CVP and drystock. With regard to Fish and Game's concern outlined above, the amendments ensure that any decision made by WRC's Chief Executive relating to alternatives to Overseer must be based on expert evaluation by three appropriately qualified and experienced experts.

[569] We find that for activities other than dairy farming with more than a low risk of diffuse discharges, this amendment will:

- (a) be able to demonstrate whether a reduction will occur unless discharges are already as low as practicable, which is an essential requirement for the authorisation of farming activities in accordance with PC1 and the RMA;
- (b) avoid an unnecessary proliferation of different models and ensure consistency of approach across each farming sector.

[570] In Part J of the Second Interim Decision, we undertook comprehensive evaluations of "Reductions required to meet the PC1 Interim Water Quality Targets" and "Evidence relating to reductions in contaminant discharges likely to be achieved by the PC1 provisions". This included individual evaluations of reductions

required in nitrogen, phosphorus, sediment and *E. Coli*. We reconciled our findings with what had been observed in receiving environments.

[571] In Part K of the decision, we undertook an assessment of whether there will be a reduction in the s 70(3) effects within 10 years “based on reasoned judgement, taking into account the evidence before us, relevant case law and the experience of members of the Court on cases addressing the effects of diffuse contaminant discharges on aquatic environments”. We found:

[230] We are satisfied that the current PC1 provisions will reduce the s 70(3) effects to be as low as practicable across the PC1 area within 10 years. Whatever the extent of reductions achieved, they will form an essential first step toward achieving Te Ture Whaimana, which cannot be achieved without them.

...

[235] Our overall finding is that the permitted activity standards in combination with the other provisions of PC1 will be a contribution to a reduction in the s 70(3) effects within 10 years. In view of the extent of existing degradation of water bodies in the PC1 area, the reduction in effects will be relatively limited in extent overall and the extent of reduction will not be detectable by state of the environment monitoring because of variability due to natural and other influences. Similarly, predictive modelling will not be sufficiently accurate to quantify the reduction achieved within the term of PC1.

[572] The amended wording of s 107(2A) of the RMA provides for a consent authority to grant a discharge permit provided it is satisfied that conditions on the permit will contribute to a reduction of any significant effects on aquatic life over the duration of the permit.

[573] We find that the provisions as now proposed relating to alternatives to Overseer for activities other than dairy farming with more than a low risk of diffuse discharges are the most appropriate to meet the objectives of PC1.

[574] At a more detailed level we find that:

(a) some headings in Schedule B may require amendment, for example Section A as it currently applies to dairy farming as the only sector for which an NRS has been approved for use in PC1.

(b) In Schedule B(2)(4), Advice note 1 is to be amended as follows:

Except in exceptional circumstances, the choice of tool to use is at the discretion of the farmer, provided it is has been approved for use in Chapter 3.11 in accordance with Schedule B(C).

[575] To be clear, Overseer must be used for dairy farms with more than a low risk of diffuse discharges unless and until an alternative model is approved in accordance with Schedule B(C).

Scope

[576] Schedule 1(2)(e) in the Notified Version provided for nitrogen discharges to be calculated using Overseer or “any other alternative model or method” approved by WRC’s Chief Executive. Schedule B(A)(3) of the Decisions Version also provided for alternative models to be used.

[577] No appeals sought the removal of the provision to allow alternative models to Overseer, meaning there was no scope for WRC to have removed it. However, WRC appealed its own decision in relation to alternatives to Overseer, seeking clarification about the qualifications of individuals who could propose alternative models and risk inconsistent farm data across the region, which confirms WRC’s own expectations that alternatives could be proposed. Ballance Agri-Nutrients Ltd supported the ability to use approved alternatives to Overseer in its appeal, considering that Clause 3 of Schedule B does not provide enough detail on how equity and data consistency for outputs between models will be ensured.

[578] We are satisfied that the Ballance Aggregate appeal provides scope for our amendments in response to Direction 27.

Directions 28 and 29: Policies relating to offsetting and compensation¹⁷⁷

[579] Directions 28 and 29 required WRC to, respectively:¹⁷⁸

Amend Policies 5 and 12b relating to offsetting and compensation as discussed in Part F26 and recommend if a consequential amendment to Policy 13e. is required where it refers to offsetting/compensation proposed in accordance with Policy 12.

Consider if both Policies 5 and 3b.iii are necessary in relation to CVP activities.

The issue

[580] Policy 11 of the Notified Version included provisions to provide for offset measures to be proposed in an alternative location where it is not practicable to avoid or mitigate all adverse effects from a point source discharge. While there was no equivalent policy relating to diffuse discharges in the Notified Version, Policy 5 of the Decisions Version provided for offsetting and compensation where there was a sufficient reduction so that “the positive benefits to restoration and protection of the health and wellbeing of the Waikato and Waipā Rivers demonstrably exceed the adverse effects from any increases in the diffuse discharge of any of those contaminants, provided any increases are not of a contaminant that Table 3.11-2 identifies as a priority for reduction in that sub-catchment”. Policy 12b of the Decisions Version set out requirement for offsets and compensation where residual effects from point source discharges occurred despite the adoption of the best practicable option.

[581] A number of appeals were lodged in relation to offsetting and compensation as discussed in the First Interim Decision,¹⁷⁹ and the proposed provisions were the

¹⁷⁷ First Interim Decision at Parts F26 and F27, Memorandum of counsel for WRC dated 4 August 2025 from [251], and attached consultation document from [310].

¹⁷⁸ First Interim Decision at [1184].

¹⁷⁹ From [993]-[996].

subject of considerable dispute through the appeal hearing. Mr Trebilco addressed offsetting and compensation in his evidence.¹⁸⁰

[582] Having considered the evidence and what the provisions are seeking to achieve, we supported WRC’s proposed removal of the reference to offsetting and compensation in both Policies 5 and 12b, as it overcame a number of concerns relating to their use. The terms “offsetting” and “compensation” were not used in WRC’s Final Proposal dated 1 December 2023. However, it did not remove a concern we raised during the hearing about how it will be possible to demonstrate there will be a net benefit by dissimilar contaminants being reduced when another contaminant increases. We noted that Policy 3b.iii of the Decisions Version addresses the risk of diffuse discharges from CVP activities, and we wanted to be sure there was no overlap or conflict with Policy 5.

[583] We also addressed a range of related issues, including the inter-relationship between related policies in the operative Waikato Regional Plan and PC1 and directed WRC to propose policy amendments to address the issues raised in Part F27.

Substantive responses to the First Interim Decision

[584] In relation to the determination of net benefit, WRC responded in the consultation document attached to its 4 August memorandum:

[311] ... WRC agrees that this is a matter that will need some interpretation in any particular case. In simple terms, WRC considers that if there is a ‘small’ increase in one contaminant, but a decrease in one or more of the other contaminants, there would likely be a clear net benefit to the restoration and protection of the health and wellbeing of the Waikato and Waipā Rivers. Policy 5(b) attempts to describe this:

Any increase in the risk of diffuse discharge of one or more of nitrogen, phosphorus, sediment or microbial pathogens from the property(s) is addressed by a reduction in the risk of diffuse discharge of those contaminants that are not increasing, so that on balance, there is a clear net benefit to

¹⁸⁰ Statement of Evidence of Mr Trebilco dated 26 May 2023, primarily from [203] to [244] and Evidence in Rebuttal dated 25 August 2023, primarily from [134].

the restoration and protection of the health and wellbeing of the Waikato and Waipā Rivers;

- [312] The decision as to whether in any particular case, a combination of some increases and some decreases in contaminant risk would result in a clear net benefit to the River will need to take into account a number of factors including the size of risk increases and decreases, sub-catchment priorities for contaminant reduction, the certainty that risks will in fact decrease or increase, cultural implications of increases and decreases and so on. WRC has considered whether to add a clause to Policy 5 that lists such factors to be considered. However, any list runs the risk of missing matters that may be important to consider in particular cases. WRC therefore has decided not to amend Policy 5 in this way.
- [313] Whether there is a clear net benefit to the restoration and protection of the health and wellbeing of the Waikato and Waipā Rivers would need to be supported by science, by an understanding of Te Ture Whaimana intentions and requirements, and by an analysis of the PC1 policies and objectives relevant to the consent application. WRC does not consider that better guidance can be given than that already in Policy 5, without inappropriately limit the decision-making process. WRC therefore considers that Policy 5 should remain as drafted.

[585] In response to our direction to propose policy amendments to address the issues raised in Part F27, WRC proposed the following addition to Policy 12(d) in its 4 August version of PC1:

- vii. Any provision for reasonable mixing shall be assessed in accordance with Section 3.2.3 Policy 8, and include consideration of Implementation Methods 2.3.4.18 and 2.3.4.19. In addition, when considering the best practicable option to avoid adverse effects of discharges of nitrogen, phosphorus, sediment or microbial pathogens within the mixing zone, consideration should be given to whether the mixing zone:
- should apply for the term of the consent; or
 - be subject to periodic review; and
- ix. Any practicable alternative to the location of the discharge so that the adverse effects of discharges of nitrogen, phosphorus, sediment or microbial pathogens on the relationship that tangata whenua as Kaitiaki have with water and their taonga (such as waahi tapu and sources of mahinga kai identified in the locality of the point source discharge) can be:
- Avoided, or

- Where that is not practicable, remedied or mitigated to the extent reasonably practicable.

[586] In relation to Direction 29, WRC responded in the consultation document attached to its 4 August memorandum:

[317] In [1004] the Court states that this may obviate the need to make provision for offsetting and compensation for CVP activities. WRC notes that Policy 3(b)(iii) ends in the word “or”, and is then followed by reference to Policy 5. It will not always be possible for expansion of CVP to achieve Policy 3(b)(iii), and in fact this may be the exception rather than the rule. If expansion of CVP does not have access to Policy 5, this would greatly reduce flexibility for movement/expansion of CVP under PC1. WRC considers that sufficient protections are included in PC1 to allow some expansion of CVP without compromising the achievement of the objectives, but Policy 5 is an important part of providing for CVP and should be retained.

[587] HortNZ supported the approach of WRC and strongly emphasised the need for Policies 5 and 12b to remain as drafted in order to properly provide for CVP.¹⁸¹

[588] In its memorandum dated 27 July to WRC, Fish and Game expressed concern that the proposed framework in WRC’s proposed Policy 5:¹⁸²

[7] ...can allow for an increase in nitrogen, that could cause adverse effects and cause interim target attribute states to be exceeded, to be addressed by a reduction in risk of sediment in another catchment. This is trading off the health and wellbeing of one catchment for a potential benefit in another location. It may lead to a loss of values of the river, in particular ecosystem health and fishery values. ...

[589] It stated that trading off contaminants in this way is inconsistent with the offsetting expert evidence provided by Dr Corkery (called by DOC) and with the evidence of Fish and Game.

¹⁸¹ HortNZ memorandum to WRC dated 25 July 2025 at [24].

¹⁸² Fish and Game memorandum to WRC dated 25 July 2025 at [7].

[590] In its final paragraph relating to these directions, Fish and Game welcomed WRC's confirmation at [315] of its consultation document that trading off contaminants is not intended to be provided for by Policy 12.

[591] The Director-General of Conservation supported the matters raised by Fish and Game.¹⁸³

[592] No other party addressed Directions 28 and 29 in subsequent memoranda to the Court.

The September Judicial Telephone Conference and resulting directions

[593] In our pre-conference minute, we stated:

[126] We consider that Policy 5 in combination with Policies 11 and 12 are likely to be the most appropriate way to meet the objectives for point source discharges, but will invite parties to comment

...

[129] In other respects, we do not anticipate other amendments to the two policies are required but we will invite parties to comment.

[594] At the JTC, Fish and Game, supported by Forest and Bird and the Director-General, wanted it recorded that Fish and Game continues to oppose trading off contaminants for both Policy 5 and if it's intended for Policy 12.

Our findings

[595] In our post-conference minute dated 15 September, we stated:

[81] These directions relate to offsetting and compensation and we explored them and the term "clear net benefit" in some detail through the hearing. The matters have already been well canvassed and resolved and the Court will not re-open them.

[82] We accept WRC's responses and proposed amendments to the directions from the Court, including amended Policy 12d. to include new clauses d.vii and d.ix. We accept that both Policy 3(b)(iii) (numbered 3(c)(iii) in WRC's proposal dated 4 August 2025) and Policy 5 should remain.

¹⁸³ Memorandum of counsel for Director-General dated 15 August 2025 at [7].

Scope

[596] In its appeal at 4.8(b), Oji sought an amendment to Policy 12 by “deleting clause (b) and replacing it with a new clause that provides a pathway for offsets/compensation that is optional for applicants, but which if adopted is recognised and given credit for”. It raised related matters in relation to Objective 3.

[597] HortNZ appealed “Policy 3 to ensure consistency with Schedule B and to remove the offsetting and compensation requirement for commercial vegetable production”. In its reasons in Appendix A, it stated:¹⁸⁴

This requirement has been deleted because of the effect it has on the discretionary consent pathway. Under the pathway commercial vegetable growers are required to grow within a cap. Therefore they should not always be required to offset/compensate. The relevance or not of offsetting or compensation for a particular proposed activity remains a relevant assessment matter via Policy 5.

[598] Forest and Bird sought the deletion of references to offsetting and consultation in Policies 3d(iv), 5, 12b, and 13 because they are not appropriate in a water quality context. The Director-General sought the retention of Policy 5, amended to “Provide for offsetting and compensation that better achieves the objectives of Te Ture Whaimana o Te Awa o Waikato where: ...” She sought that Policy 12(b)(iv) be amended by including new iv “the measure demonstrates environmental gains in addition to those already required by Chapter 3.11, in the absence of the offset or compensation”.

[599] In view of the above appeals, we are satisfied there is scope to the proposed amendments.

Direction 30: Point Source Discharges

[600] Direction 30 required WRC to:¹⁸⁵

Propose policy amendments to address the issues raised in Part F27

¹⁸⁴ HortNZ Notice of Appeal dated 7 July 2020, Appendix A, page 6.

¹⁸⁵ First Interim Decision at [1184].

The issue

[601] We addressed point source discharges in Part F27 of the First Interim Decision. The primary issue remaining in dispute at the end of the hearing was the definition of a “zone of reasonable mixing”.

[602] Briefly, after considering the views of WRC and other parties in response to the Decision, we stated in our post conference minute dated 15 September:

[85] ... Having reviewed this policy, we remain of the view that including the words “outside the mixing zone” in Policy 12(d)(vii) improves clarity. We direct WRC to include them.

[603] In its subsequent consultation document attached to its 31 October memorandum, WRC had made the amendment as directed and stated that no responses were received from parties. The amendment is included in PC1 Final and we are satisfied that Direction 30 has been met. No issues of scope arise. The amendment is a minor amendment to operative Policy 8 in Section 3.2.3 of the Waikato Region Plan to provide clarity and avoid any potential for misinterpretation.

[604] On a related matter, we accept the proposed amendment to sub-clause 12(d)(ix) of Policy 12 relating to practicable alternatives to the location of a discharge.

Direction 31: Minor Amendment to the wording of Policy 12(c)

[605] Direction 31 required WRC to:¹⁸⁶

Inserts the words “relating to the load of nitrogen, phosphorus, sediment or microbial pathogens” following the words “For the purpose of establishing if a discharge will have a residual adverse effect ...” in Policy 12c.

[606] The amendment is included in PC1 Final and we accept that Direction 31 has been met. It provides clarification of intent and no issues of scope arise.

¹⁸⁶ First Interim Decision at [1184].

Direction 32: Tāngata Whenua Ancestral Land

[607] Direction 32 required WRC to:¹⁸⁷

In relation to the development of Tāngata Whenua Ancestral Land:

- (a) amend Objective 4b to read “impediments to the flexibility of the use of tāngata whenua ancestral lands are minimised” as sought by CNI;
- (b) amend Policy 17(a) to enable a start to be made on developing TWAL during the term of PC1, to be implemented through a new restricted discretionary activity rule. In addition, Policy 17 is to be amended to recognise the River Iwi relationships with the River;
- (c) propose a new restricted discretionary activity rule for developing TWAL ... to include land use change and the use of land for farming, including any associated diffuse discharge of the four primary contaminants; and
- (d) consider an alternative definition of Tāngata Whenua Ancestral Land.

The issue

[608] We addressed Direction 32 in Part F28 of the First Interim Decision:

Providing headroom for Tāngata Whenua Ancestral Land (**TWAL**). By way of background, we stated:

[1041] The objectives supporting the vision and strategy are explicit and unequivocal in requiring restoration and protection of both the River and the relationship of Waikato River iwi according to their tikanga and kawa with the Waikato (objectives a to d). The relationship of iwi with the River, requires that they are able to use, care for and protect their land and resources. That is how iwi exercise mana and rangatiratanga.

[1042] Policy 16 of the Notified Version, in particular, was developed in order to provide tāngata whenua with flexibility and the opportunity to develop ancestral lands that they received through a Treaty settlement process, in a way that provides for the relationship tāngata whenua have with their lands, that provides for the exercise of kaitiakitanga and the creation of positive economic, social and cultural benefits for tāngata whenua now and into the future. ...

[1043] The Notified Version stated that any future allocation must consider “[a]llowance for flexibility of development of tāngata whenua ancestral land”,
...

[609] Ensuring tāngata whenua have the ability to use their ancestral land was an important issue throughout the PC1 process. WRC’s Final proposal dated 1 December 2023 and all previous versions of PC1 provided for the development of TWAL as a non-complying activity. In our view, as stated in Part F28 of the Interim Decision, non-complying activity status would preclude or unnecessarily and inappropriately delay the achievement of objectives (b), (c) and (e) of Te Ture Whaimana.

[610] Throughout the appeals process, WRC was reluctant to accept that Te Ture Whaimana objectives (b) to (d) relating to restoration of Tāngata Whenua relationships must be given the same priority as restoration and protection of the Waikato River; the two are inextricably linked. There is no legal or other basis for asserting that these objectives have any less importance than any of the other objectives.

[611] We stated in the First Interim Decision:

[1084] We consider that WRC’s proposed amendments to Policy 17 in WRC’s Final Proposal are generally appropriate. However, the proposed addition to Policy 17(a) “... and have regard to the importance of allowing some further development of those lands” - does not go far enough. Policy provision must enable a start to be made on developing TWAL during the term of PC1, implemented by a new restricted discretionary activity rule as discussed below. ...

Substantive responses to the First Interim Decision

Definition of Tāngata Whenua Ancestral Land

[612] By way of background, in the First Interim Decision, we stated in relation to the definition in the Decisions Version:

[1035] Evidence submitted by all iwi parties was that the definition was too restrictive. It fails to make provision for general land held by Māori and fails to provide for lands returned through the treaty settlement process but obtained at a later date whether by deferred settlement process or through a Rights of First Refusal process or by other such means.

...

[1037] WRA, [River] iwi and CNI agreed the following definition for TWAL:

- (a) has been returned to, or acquired by, tāngata whenua through Treaty settlement processes or mechanisms; or
- (b) is Māori freehold land within the meaning of Te Ture Whenua Māori Act 1993.

...

[1039] Given that there is scope for further refinement of the definition of TWAL in later plan changes, we find that the definition agreed by WRA iwi and CNI should be applied at this time.

[1040] The parties may wish to consider the following as an alternative:

Tāngata whenua ancestral lands means land, within the catchment, that has been returned to, or acquired by tāngata whenua through Treaty settlement process or mechanism (such as rights of first refusal or deferred selection process) and is Māori freehold land or General land held by Māori who are tāngata whenua⁵⁰³ within the definition of Te Ture Whenua Maori Act 1993.

[613] In its 4 August memorandum, WRC proposed to correct the definition of TWAL so that it aligns with the definition preferred by the Court [at [1039]].¹⁸⁸ In the attached consultation document, WRC stated:

[343] WRC does not have a strong view on the alternatives but notes that the Court's suggested definition would appear to narrow the area of land that could be considered TWAL to some degree. The WRA, River Iwi and CNI definition includes settlement land or Māori freehold land. The Court's alternative is settlement land which is also Māori freehold land or General land. The WRA, River Iwi and CNI definition is consistent with the Notified and Decisions Version definitions of TWAL. Given that WRC is not aware of a reason for narrowing the definition, WRC would support the WRA, River Iwi and CNI definition.

[614] WRA, Waikato and Waipā River Iwi and CNI sought retention of the definition of TWAL they had previously advanced and accepted by the Court at [1039].¹⁸⁹ In their memorandum to the Court dated 18 August, the Iwi of Hauraki supported the primary definition of TWAL in the Interim Decision, noting that the Court's suggested alternative definition was problematic. In their subsequent

¹⁸⁸ At [282].

¹⁸⁹ Comments made to WRC in response to the consultation document attached to its memorandum dated 4 August 2025.

memorandum dated 2 September they sought clarity from the Court on its thinking regarding the definition.

New Rule 3.11.4.10 and proposed amendments to other provisions

[615] WRC accepted the Court’s finding that non-complying activity status would “preclude or unnecessarily and inappropriately delay the achievement of objectives b, c and e of Te Ture Whaimana”.¹⁹⁰

[616] It commented in the consultation document as follows:

[333] Through the appeals process, WRC considered the restricted discretionary activity rule for development of TWAL requested by Iwi of Hauraki and the discretionary activity rule requested by CNI Lands but was concerned that neither suggestion included any limitation on development or provided an assessment of the potential effects on achievement of the PC1 Objectives. The Court has effectively resolved both these matters by directing a restricted discretionary activity rule that limits development to the area modelled by Dr Olubode-Awosola (that is, one third of the 9,200 ha of TWAL that may be developed in the short-term).

[617] WRC amended Objective 4(b) as directed. It also proposed amendments to Policy 17 and Rule 3.11.4.2 and a detailed new restricted activity Rule 3.11.4.10 for the development of TWAL. We note that WRC considered two further amendments to Policy 17 proposed by Waikato and Waipā River Iwi and CNI¹⁹¹ and accepted the first but not the second in PC1 Final, which we agree with.

[618] Waikato and Waipā River Iwi and CNI proposed a substantially modified version of Rule 3.11.4.10, with comments, in their response to WRC’s discussion document, which WRC addressed in a separate memorandum dated 8 August. Amendments proposed by the Waikato and Waipā River Iwi and CNI were attached to that memorandum and included:

¹⁹⁰ Memorandum of counsel for WRC dated 4 August 2025, attached consultation document at [332].

¹⁹¹ Waikato and Waipā River Iwi and CNI response to WRC’s consultation document attached to its memorandum dated 4 August 2025 at [17].

[23] ...

(a) ...

... the River Iwi and CNI consider that Rule 3.11.4.10 should reasonably be modified to expressly enable the development of TWAL for CVP (and also for other farming activities beyond drystock and dairying).

(b)(i) ... any new farming activities on TWAL should otherwise be subject to the same thresholds, parameters and conditions as equivalent farming activities which are consented under other Rules within PC1;

... while some land use change for TWAL might involve moving from plantation forest to dairying, it is more likely to involve smaller areas than a milking platform (ie, <100Ha), and potentially higher value land uses that do not involve animals (eg, perennial horticulture) or have animals as a secondary use (for example, a solar farm), which are likely to be low risk in terms of contaminant discharge;

... some of these uses would not require an FEP, (for example, under Rule 3.11.4.1 in respect of small and very low intensity farming);

... some of the exclusions or thresholds that are expressly included in Rule 3.11.4.6 have not been carried across into Rule 3.11.4.10; and

(b)(ii) ... certain provisions in some of those Schedules (and, also condition (5)(b)(ii) in the Rule itself) are drafted on the basis of an existing and continuing land use, not a new changed land use. They are therefore inapt where that is the case.

The September Judicial Telephone Conference and resulting directions

[619] In our pre-conference minute, we stated:

[133] Subject to any further matters raised by parties we generally accept WRC's proposed amendments, except for proposed new Rule 3.11.4.10.

...

[137] When it comes to proposed new activities with a low risk of diffuse discharges, a conundrum exists as no party sought a less restrictive activity status than restricted discretionary. We do not consider WRC's proposed alternative Rule 3.11.4.10 has merit as it does not appropriately address either more than low or low risk activities and could be subject to widely differing interpretations. As we stated in the Interim Decision, it is not the role of the Court to step into the planning arena, but we are concerned that resolution of this issue could result in further delays before PC1 can be made operative.

[138] To assist parties, we make the following observations:

...

- (b) We consider that new Rule 3.11.4.10, generally as originally proposed by WRC, should apply to any dairy or drystock activity that cannot meet the permitted activity conditions and standards and to all new CVP activities. That is to ensure consistency with the provisions that existing activities are required to meet;

...

- (d) No party sought a less restrictive activity status than restricted discretionary for TWAL land use change, so any amended rule framework for lower nitrogen loss risk land use change may or would need to remain as a restricted discretionary activity unless a s 293 process is followed; and

- (e) ... we can see no reason why more stringent conditions and standards should apply to TWAL land use activities with a low nitrogen loss risk than apply to existing land use activities with a low nitrogen loss risk. Could consideration be given to the same approach proposed as an amendment to Rule 3.11.4.4(2) at paragraph [81]?

[139] We will direct WRC to consider these matters in consultation with other parties and recommend a revised rule for consideration by the Court.

[140] This will require further discussion at the JTC.

[620] Just prior to the JTC, in their memorandum dated 1 September to the Court, the Waikato and Waipā River Iwi and CNI stated at [2]

- (c) ... the views expressed by the Court with reference to Direction 32 and tangata whenua ancestral land (**TWAL**) helpfully address the primary points of residual disagreement between WRC and the River Iwi and CNI in relation to the proposed new restricted discretionary activity rule the development of TWAL (namely, whether the rule should be hybrid land use change and discharge rule and whether the rule should enable the development of TWAL for CVP);(d) with the Court's views on those matters confirmed, the River Iwi and CNI are confident that a revised rule can be developed, following engagement between WRC, the River Iwi, CNI and Iwi of Hauraki, for consideration by the Court;

...

- (e) there are no matters beyond those identified in the Court's Minute that the River Iwi and CNI wish to discuss at the JTC.

[621] By memorandum dated 2 September to the Court, Iwi of Hauraki supported the above memorandum. They also requested clarification as to the Court's thinking about the definition of TWAL.

[622] In relation to the definition, Mr Conway stated that WRC understood that the Court was happy with the definition that WRC put forward in its 4 August memorandum, which was the same as one that the Court endorsed in paragraph [1039] of the interim decision.¹⁹² He then stated that he considered the alternative that had been proposed in the last 24 hours [memorandum from Iwi of Hauraki] was quite a different proposal would substantially widen the definition. Mr Ferguson confirmed that the Waikato and Waipā River Iwi and CNI were hesitant to expand the definition and were content for the definition to remain as the Interim Decision.

[623] Judge Williams suggested this could be an issue to be resolved by WRC, Mr Ferguson and Mr Majurey and others as to whether they you could agree on a final version, but by way of an indication, what had been signalled in both versions (by adding a third component to that definition) is what was intended to be suggested by the Court.

[624] Mr Conway had previously acknowledged that the Court had been very clear in its minute what it wanted from the Rule and that WRC wanted to carry out that drafting in conjunction with Waikato and Waipā River Iwi, in particular.¹⁹³ He sought a number of clarifications, which the Court provided, including that the Rule was to be a hybrid rule, not a land use rule only as had been proposed by WRC. Mr Ferguson confirmed that the Waikato and Waipā River Iwi and CNI would be happy to work through the issues with WRC and were committed to doing so.

[625] In our post-conference minute dated 15 September, we provided clear guidance on our expectations, including stating:

¹⁹² Transcript, from page 101.

¹⁹³ Transcript, at page 99.

[89] A key requirement is to ensure that, as far as possible, the provisions relating to the use of TWAL do not apply any greater or lesser requirements than those applying to other equivalent activities. ...

[90] We direct WRC to propose an appropriate rule with the involvement of Tangata Whenua. Prior to submitting its proposal to the Court, WRC is to provide other parties the opportunity to comment and advise the Court of any matters of disagreement remaining.

[91] With regard to the definition of TWAL, we will retain it as it is in the Interim Decision unless the parties can agree on a different definition.

WRC's further proposals and parties' responses

[626] In its consultation document dated 20 October, included as Appendix B of its memorandum dated 31 October, WRC stated at [26] that it had suggested a new rule which authorises both land use change on TWAL and the subsequent farming activity, subject to the following comments:

- (a) ... condition 3 in suggested Rule 3.11.4.10. The suggested condition means that small and very low intensity farming which meets all of the conditions in Rule 3.11.4.1 does not need to comply with any of the other conditions in Rule 3.11.4.10 (provided it is on TWAL and does not exceed the 3067hectare land use change cap).
- (b) The suggested condition 3 provides for low risk farming in a similar way. A new dairy farm would not, however, be able to comply with all of the conditions in Rule 3.11.4.3 ...
- (c) Rule 3.11.4.10 otherwise generally reflects the requirements for more than low risk farming and commercial vegetable production in rules 3.11.4.4, 3.11.4.5 and 3.11.4.8. The suggested rule does not authorise existing dairy or drystock farming that does not meet the conditions in permitted activity rules 3.11.4.1 or 3.11.4.3, as these activities are authorised under Rules 3.11.4.4 and 3.11.4.6.

[627] The proposed rule was then set out and was comprehensive. Responses from other parties were included in Appendix C of the memorandum. Fish and Game stated it was unclear how WRC will determine whether Māori are Tangata Whenua and:¹⁹⁴

¹⁹⁴ Fish and Game response to WRC consultation document dated 28 October, attached to WRC memorandum dated 31 October.

If the hectarage cap proposed in 3.11.4.10 (condition 2) is not maintained, in the future the expanded definition could have significant implications for achieving PC 1's water quality targets.

[628] WPL provided comment on the new rule, only to the extent that it uses 22 October 2016 as a reference date (which is the subject of its appeal to the High Court in relation to Rule 3.11.4.9). Consistent with the approach taken at all previous stages, WPL requested the new rule references the date on which PC1 becomes operative (which is the date on which this rule would come into effect) rather than 22 October 2016. In the alternative, WPL submitted that the reference date could be left as a placeholder to await the outcome of the High Court appeal.

[629] WRC noted that counsel for the Waikato and Waipā River Iwi had provided comments shortly before this memorandum was due to be filed and that it was not in a position to state its final proposal until the comments had been considered. The response from the Waikato and Waipā River Iwi was included as Annexure B of its 17 November memorandum. It stated]:

[3] In relation to the consequential amendments related to Rule 3.11.4.10 and proposed in paragraph 28 of the WRC supplementary consultation document dated 20 October 2025, those amendments have been discussed with, and are agreed by, the River Iwi and CNI.

[630] However, the Waikato and Waipā River Iwi and CNI reserved their position in terms of the consequential amendments that may be required once other parts of PC1 had been settled, noting that these matters should reasonably only affect TWAL and not the positions of other parties. They stated that the revised version of Rule 3.11.4.10 proposed in WRC's supplementary consultation document dated 20 October 2025 incorporates and addresses many of the matters raised by the Waikato and Waipā River Iwi and CNI in relation to the original drafting proposed by WRC. They wished to continue discussions with WRC in the expectation that a common understanding could be reached.

[631] They stated that the definition of TWAL proposed in paragraph 24 of the WRC supplementary consultation document dated 20 October 2025 correctly recorded the definition as proposed jointly by the Waikato and Waipā River Iwi,

CNI and Iwi of Hauraki. Following that agreement, an issue was identified which may affect the TWAL of one River Iwi, Waikato, and:¹⁹⁵

Accordingly, to avoid any doubt as to whether such land held in the name of a tupuna is “general land owned by Māori who are tāngata whenua” within the scope of paragraph (c) of the proposed TWAL definition, it is proposed that an additional paragraph (d) be added to the TWAL definition in the following terms:

“(d) land held in the name of Pootatau Te Wherowhero pursuant to section 19 of the Waikato Raupatu Claims Settlement Act 1995.”

[632] WRC accepted the substance of the definition proposed and we confirm the definition is to be amended as set out in paragraph [50] of WRC’s memorandum dated 17 November.

[633] In response to the matters raised by Fish and Game, WRC considered them to be implementation issues and suggested that “Tāngata Whenua” be defined as set out in the RMA. We agree that they are implementation issues and have no issue with the proposed definition.

[634] In relation to WPL’s proposal to change the 22 October 2016 date in Rule 3.11.4.10, the Waikato and Waipā River Iwi and CNI’s position was that the date should remain unchanged. WRC maintained its view that the 22 October 2016 notification date is appropriate for Rule 3.11.4.10 (and Rule 3.11.4.9).

[635] We were not advised of any further discussions or agreements reached between the parties in relation to any outstanding matters relating to TWAL and we have based our evaluation on version of Rule 3.11.4.10 in PC1 Final. This is broadly modelled on Rule 3.11.4.6: Restricted Discretionary Activity Rule – Farming in Whangamarino Wetland catchment, in accordance with Direction 32. We note that Condition 6 requires a nitrogen leaching risk analysis to be undertaken “For farming other than commercial vegetable production”. WRC is to review this provision and Rule 3.1.4.6(4) to reflect our finding relating to Direction 13 that the use of FEPs to demonstrate a reduction in nitrogen losses from drystock farms with more than a

¹⁹⁵ Memorandum of counsel for WRC dated 17 November, Annexure B at [4].

low risk of diffuse discharges of the primary contaminants is appropriate in the same way that we have accepted its use for CVP.

Our overall evaluation and findings

[636] We accept the amended definition of TWAL to include the new clause (d) set out above.

[637] We are satisfied that the inclusion of Rule 3.11.4.10 is both necessary and appropriate to achieve PC1 Objective 4(b): Impediments to the flexibility of the use of tāngata whenua ancestral lands are minimised. We are satisfied that the version in PC1 Final satisfies Direction 32, subject to the above amendment. It is a hybrid rule that includes both land use change and associated diffuse discharges of the four primary contaminants. It leaves flexibility that will enable the appropriateness of any proposed land use change to be considered on its merits, taking effects into account effects on the environment in accordance with the objectives and policies. That may include any type land use change identified by tāngata whenua that meets the relevant provisions.

[638] The Rule is complex, but we note Mr Ferguson stated “if more words give greater clarity in terms of stepping through the requirements, then we don’t have an issue with that as such, but clarity and certainty is key ...”.¹⁹⁶

[639] In relation to WPL’s proposal to change the 22 October 2016 date in Rule 3.11.4.10, we agree with the Waikato and Waipā River Iwi, CNI and WRC that the date should remain unchanged and that the 22 October 2016 notification date is appropriate for both Rule 3.11.4.10 and Rule 3.11.4.9.

Scope

[640] In their appeal, Iwi of Hauraki sought the following amendment:¹⁹⁷

¹⁹⁶ Transcript, at page 100.

¹⁹⁷ Iwi of Hauraki Notice of Appeal dated 7 July 2020 at page 11.

Insertion of a new rule Restricted Discretionary Activity Rule – Land Use Change for Tāngata Whenua Ancestral Land:

Rule 3.11.4.10 – Restricted Discretionary Activity Rule – Land Use Change for Tāngata Whenua Ancestral Land

Any change in the use of tāngata whenua ancestral land from that which was occurring at 22 October 2016 to an activity that does not comply with the conditions, standard or terms of **Rules 3.11.4.1 to 3.11.4.9** and the associated diffuse discharge of nitrogen, phosphorus, sediment and microbial pathogens onto or into land in circumstances which may result in those contaminants entering water is a restricted discretionary activity (requiring resource consent).

Waikato Regional Council restricts its discretion over the following matters:

- i. Relationship of tāngata whenua with their ancestral lands.
- ii. The exercise of kaitiakitanga.
- iii. The creation of positive economic, social and cultural benefits for tāngata whenua now and into the future.
- ...

[641] Ground 4 of the Waikato and Waipā River Iwi’s appeal addressed the approach to TWAL taken in the Decisions Version. It sought an amendment to Objective 4(c) to read “new impediments to the flexibility of the use of tangata whenua ancestral lands are minimised”. CNI sought the same amendment.

[642] We are satisfied that no issues of scope arise.

Direction 33: Matters relating to objectives, policies and rules

[643] Direction 33 required WRC to:¹⁹⁸

Make amendments as set out in Parts F29 to F32.

[644] These Parts addressed other matters relating to objectives, policies and rules, including permitted activities, implementation methods, schedules and definitions.

¹⁹⁸ First Interim Decision at [1184].

[645] WRC provided a comprehensive response to this direction, and we find that the changes proposed generally satisfy Direction 33. We consider the overall appropriateness of provisions proposed in PC1 Final under Direction 35.

[646] For completeness, we note that WRC stated in its memorandum dated 25 November 2025 that it would support the following amendment to Schedule D3, Part C(3)(c)(ii) relating to auditor's reports requiring the farm operator must provide the auditor with:

78

(c) ...

ii. any evidence of circumstances beyond the control of the farmer that have prevented the full compliance with the action plan and/or any evidence of reasonable attempts to comply, and

[647] We also support this amendment but it is not included in PC1 Final and should be.

Direction 34: Duration of consents

[648] Direction 34 required WRC to:¹⁹⁹

Amend Policy 7: Duration of consents as set out in Part F33

The issue

[649] In the First Interim Decision, the Court directed WRC to amend Policy 7 to the following provision determined by the Court:

[1137] ...

Notwithstanding Policy 6 of the Waikato Regional Plan:

- (a) land use activities in sub-catchments where the interim target attribute states are exceeded, including those draining to the Whangamarino Wetland or in a subcatchment draining to lakes named in Table 3.11.3 or in a sub-catchment draining to wetlands listed in Table 3.7.7 of the WRP, will generally not be granted

¹⁹⁹ First Interim Decision at [1184].

consent for a duration exceeding 10 years and in no case for a duration exceeding 12 years; and

- (b) land use activities in all other sub-catchments may be granted consent for a duration of up to 15 years and ending no later than 31 December 2040;
- (c) The term of consent may be reduced where insufficient mitigations are proposed to be implemented to ensure diffuse discharges are reduced to be as low as practicable within 10 years of the PC1 becoming operative.

Substantive responses to the First Interim Decision

[650] In its memorandum dated 4 August, after consideration of responses from other parties, WRC proposed that the words “land use activities” be replaced by “farming and commercial vegetable production activities”. We accept that proposed change as it provides greater clarity. WRC also stated:

[306] WRC otherwise maintains the position set out in the consultation document in Annexure A, including the omission of a final expiry date of 31 December 2040 (as sought by WRA). WRA considers that no consent should have a term that expires later than 31 December 2040, because PC1 is intended to be a short-term plan change, and a first step in an 80-year programme to restore and protect the water bodies in the Waikato and Waipā River catchments. It follows that there would be an ability to re-consent farming under the next plan change. However, in a time of legislative change, WRC considers that there is significant uncertainty about when PC1 will be superseded by the next plan change. It also notes the Court’s statement in paragraph [1135] of the Interim Decision that no reliance can be placed on when new plan provisions will become operative. WRC therefore does not support a requirement that no consent should have a term that expires later than 31 December 2040.

[651] In the consultation document, WRC set out its reasons as follows:

[386] WRC supports the intention of the wording of Policy 7 determined by the Court for the reasons stated in F33. However, the result sought by the Court in making these changes may not in fact be achieved because of the end date of 31 December 2040 in clause (b) of the revised Policy 7. Clause (a) of the policy limits the duration of consent for more sensitive catchments to 12 years, but with no final date. Clause (b), for other catchments has a duration of up to 15 years and ending no later than 31 December 2040. This means that after 2028, consents for farming in less sensitive catchments will get progressively shorter consent terms than those in more sensitive catchments. WRC suggests that the 31 December 2040 date could be removed from clause (b), so that farming in less sensitive catchments could continue to have longer terms than farming in more sensitive catchments. ...

[652] In their submissions in response to WRC’s proposals,²⁰⁰ parties responded as follows. WPL supported deletion of the common expiry date. The Waikato and Waipā River Iwi and CNI supported the amended Policy 7 but stated that paragraph (c) is critical to that support and must be retained. The specific wording of WRA’s response was that it “strongly supported the Court’s inclusion of a 2040 end date and does not support the Council’s proposal to remove that end date from Policy”. It went on to say:

[20] If the Council remains concerned that consents for more sensitive catchments will expire after consents granted for less sensitive catchments, a better solution would be to include a 'for the avoidance of doubt' requirement that in no case may *any* consents granted have an end date beyond 31 December 2040.

[653] While Fish and Game did not address WRC’s proposed deletion of the common expiry date in its response to the First Interim Decision, it had previously indicated that it strongly opposed its removal of this cut-off date as proposed by WRC, including in its appeal.

Our evaluation and findings

[654] We addressed the issue of duration of consents comprehensively in the First Interim Decision and we do not accept WRC’s reasons are sufficient to support deletion of the end date. However, in view of the further lapse of time since the First Interim Decision, we direct that the end date be amended to 2041. We consider that WRA’s suggested amendment has merit and we direct WRC to add “or later than 31 December 2041” at the end of (a).

Scope

[655] Policy 7 of the Decisions Version was:

Generally not granting resource consents that authorise farming and commercial vegetable production activities for a duration beyond 2035 in recognition of the possibility that a replacement regional plan(s) may include new requirements for management after that date, including an allocation regime

²⁰⁰ Memoranda dated 25 July 2025 at [22] included in a common folder of “Responses to WRC Consultation Document”.

[656] Adjusting the end date to reflect the six years that has elapsed since the decision was notified would mean the duration would end in 2041, consistent with the Court’s directions.

[657] In its appeal, Fish and Game sought the removal of the word “generally” from Policy 7 because:²⁰¹

The word “generally” provides an invitation to apply for consents with a longer duration. This could, in some cases, put significant pressure on decision-makers to grant consents with a longer duration (for example pressure from applicants seeking to ‘pre-empt’ a future allocation regime).

[658] As the Court is not changing the Decisions Version, other than to limit any potential to extend the duration consistent with Fish and Game’s appeal, no issues of scope arise.

Direction 35: Terminology²⁰²

[659] Direction 35 required WRC to:²⁰³

Review all PC1 provisions to remove unclear terminology as far as possible and consider more consistent use of “practicable”

The issue

[660] We addressed this in Part F32 of the First Interim Decision, where we stated:

[1116] As a general principle for ensuring drafting clarity, “practicable” may be more appropriate in PC1 as opposed to phrases such as “significant reductions”, “disproportionately large”, “significant or disproportionate”, “proportionately to the magnitude of the risks” and “meaningful with respect to the size of the risk”. While “practicable” does not provide absolute certainty, it is a familiar and commonly used term in RMA practice and would avoid or reduce the need to interpret several other different and less certain terms. Unless there is sound reason for not using “practicable”, WRC in consultation with parties should amend the provisions to provide greater clarity and consistency where appropriate. We acknowledge this may *de*

²⁰¹ Fish and Game Notice of Appeal dated 8 July 2020 at page 12.

²⁰² First Interim Decision at Part F32, Memorandum of counsel for WRC dated 4 August 2025 from [307], and attached consultation document from [388].

²⁰³ First Interim Decision at [1184].

minimis increase in risk is substituted for “material increase” or a definition of “material increase” is provided.

[661] Elsewhere through the decision, we identified the need for greater clarity and the use of more consistent terminology.²⁰⁴

[662] In our post-conference minute dated 19 September, we stated:

[135] Finally, in our view, there remain inconsistencies in wording in WRC’s Final Proposals and there would be merit in WRC having its intended final set of Final Proposals reviewed as a complete document by a suitably qualified and experienced planning expert who has not been involved in the development of PC1 as an independent check for consistency of terminology. Parties should be provided with the opportunity to review any changes before the Final proposal is submitted to the Court.

[663] In its memorandum dated 1 December 2025, WRC stated:

[5] As required by the Court, WRC has carried out a full review of PC1. The review focused on standardising inconsistent terminology, improving readability, and ensuring integration with the operative Waikato Regional Plan. These amendments are largely editorial and do not change the intent or outcomes of the provisions of PC1.

...

[7] This review resulted in a number of changes being proposed to PC1, which were included in an updated consolidated version of PC1. In addition to the changes for consistency and readability, the consolidated version of PC1 included changes proposed by WRC in response to the General Matters Minute and the Stock Exclusion Minute.

[664] By memorandum dated 9 December, WPL referred to feedback it had provided to WRC in relation to Rule 3.11.4.9, pointing out a minor cross-referencing error and the incorrect inclusion of a note, requesting that they be corrected. WRC confirmed it agreed with WPL.²⁰⁵ We have no reason to comment further and will leave it to WRC to ensure the corrections are made.

²⁰⁴ For example, First Interim Decision at [90], [92], [117], [243], [256], [397], [496], [521], [551], [673], [687] and [1022].

²⁰⁵ Memorandum of counsel for WRC dated 15 December 2025.

Our evaluation and findings

[665] We have reviewed PC1 Final as a complete document and consider it to have been significantly improved in terms of the clarity and consistency of the provisions and, as a broad comment, we are satisfied that it meets Direction 35. As WRC is satisfied that it does not need to make further changes, and it is WRC's plan, we generally accept the amendments made as meeting other directions, subject to our findings elsewhere in this decision. We anticipate WRC will do a final check of a clean version to ensure that sub-clauses and cross-references are correct and to correct any remaining minor typographical errors. However, we make the following observations for WRC to consider and respond to as it considers necessary in its final response to this decision.

- (a) Objective 1 refers to “wetlands, other than treatment wetlands”. We question whether the qualification is sufficient in view of the limited extent of wetlands subject to the PC1 provisions. Policy 4(a) may also require qualification where “wetland” is referred to.
- (b) In Schedule B, the first sub-heading “A. Calculation of Nitrogen-Risk Scorecard” appears incorrect as the calculation relates to the score. Further, the calculation only relates to the calculation of the nitrogen risk score for dairy farms. In view of the intention for similar scorecards to be used for CVP and drystock farms in the future as a tool to assist in understanding, assessing and managing the risk of diffuse discharges, subject to approval in accordance with the relevant plan provisions, consideration should be given to rewording the sub-heading to “Calculation of Nitrogen-Risk Score for dairy farms”. Alternatively, the reference to dairy farming in the original clause 4 should be reinstated as it is the only type of farming for which a NRS is currently approved for use in PC1.
- (c) Sub-heading B2 is “Where a FEP is to be used, the nitrogen leaching risk analysis shall be undertaken and records kept as follows”. It is to be amended to read “Where a FEP has been approved for use for

farming in Chapter 3.11 in accordance with the relevant plan provisions, the nitrogen leaching risk analysis ...”.

PART C Section 32AA evaluation, scope, need for a s 293 process, the provision of guidelines and our overall evaluation

C1 Section 32AA evaluation

[666] WRC stated in its memorandum dated 25 November:

[17] WRC considers that the development of PC1 throughout the appeals process has led to the provisions becoming more workable for those affected – particularly farmers. There has been a significant focus on practicability in the changes recommended by WRC in response to evidence and submissions at the hearing and in steps taken since the hearing and since the Court’s Interim Decision in line with the Court’s directions. WRC has sought to follow the eight principles set out in Part D6 of the Court’s Interim Decision in evaluating potential changes to the provisions and feedback from parties. In all cases, proposed changes have been considered in terms of whether they are the most appropriate way to achieve the objectives under s 32 of the RMA.

[667] WRC filed a s 32AA evaluation in support of significant changes to the PC1 provisions resulting from the Court Minutes dated 15 and 19 September 2025 on 5 December 2025. This stated:

[3] The broader section 32 justifications for PC1 as a whole are comprised in the pre-notification section 32 report, the section 42A report, the Hearings Panel’s Recommendation Report, evidence before the Court, the Interim Decision and subsequent memoranda from the parties. WRC has also undertaken an assessment as to whether, as a whole, the plan provisions work as intended and are practical and efficient to implement. The outcomes of that assessment are outlined further below.

[668] The Council Hearing Panel’s Recommendation Report recorded that the content of s 32 evaluations was the subject of significant criticism in the hearing of PC1, including the technical and economic analysis underpinning the s 32 analysis. It recorded that the limited consideration of alternatives was heavily criticised. The Panel specifically considered if there was a more efficient method to address nitrogen losses from most farms.²⁰⁶ It stated that there had been no full s 32 cost/benefit evaluation on fencing off/excluding stock from all wetlands, but

²⁰⁶ Decision Report at [406]-[408] and [651].

provided no justification its requirement to fence off all wetlands of 50 m² or greater.

[669] It was not possible to gain any meaningful understanding from the very generic statements in the Recommendation Report or from Mr Trebilco's rebuttal evidence as to why certain provisions either were or were not considered appropriate in s 32 terms. As already recorded in Part A2, we stated as part of our overall evaluation in the First Interim Decision that there was a lack of documented evidence and appropriately robust s 32AA evaluations to support some of WRC's proposed changes, a number of which could have had significant consequences.

[670] In our 19 September minute, we stated:

[65] We have seen limited, if any, meaningful evidence that s 32 was followed in terms of workability and practicability. WRC's catchment modelling did not provide any guidance, nor did Dr Olubode-Awosola's evidence or responses to questions at the hearing.

[671] We also stated that the cost of mitigation measures is clearly an important consideration in a s 32 evaluation but it was not addressed in any meaningful way in WRC's evidence. In view of their significance to the successful implementation of PC1, we directed further expert conferencing to provide estimates of a wide range of costs related to stock exclusion. In the minute, we set out our preliminary evaluation of the stock exclusion provisions, identifying a range of issues that WRC in consultation with other parties was to address and respond to in accordance with Direction 13 (see above).

[672] As noted in relation to the application of s 70 in the Second Interim Decision:

[26] The Court of Appeal referred to the Supreme Court decision in *Westfield* and observed:

...

[23] ... Section 70 mandates an outcome and that outcome must be assured by the proposed rule before it is included in the regional plan. Plainly, whether that outcome is achieved by the rule, whatever its

precise terms, is an evaluative matter upon which SRC must be satisfied,

[27] The High Court made the following observation in *Environmental Law Initiative v Canterbury Regional Council*:

[46] ... It will be for the public decision maker to demonstrate that proper consideration was given to the statutory requirement and that it carried out its statutory obligation on the basis of a sufficient foundation of information to satisfy itself of that threshold.¹³

[673] In our view, it is also for the public decision maker to demonstrate that proper consideration has been given to ss 32 and 32AA.

[674] Returning now to WRC's 5 December memorandum, it first referred to the iterative nature of plan making processes and summarised the evaluation steps undertaken in the development of PC1. It stated:

[19] The overall conclusion of these evaluations is that the general approach of PC1 is appropriate to achieve the water quality that reflects the values expressed in Te Ture Whaimana. The evaluations show the importance of making progress towards the 80-year targets in an efficient and effective way, taking into account the costs and practicalities for farmers.

[20] The Interim Decision included 32 Directions which were addressed in the WRC's memoranda dated 4 and 8 August 2025. As noted above, where changes to PC1 have been directed by the Court, the Court's Interim Decision constitutes the section 32AA evaluation (to the extent sufficient information was available).

[675] WRC then referred to the Court's s 32AA evaluations of key changes through the appeals process related to the use of the NRS as a drafting gate for low risk dairy farming, the use of Overseer and the NRS as a drafting gate for moderate and high risk dairy farming, set back distances and riparian planting alongside water bodies, the area of wetland for which fencing and riparian planting is to be provided and the development of TWAL. It recorded the Court's wider findings as follows, and we note here that before making that finding we had set out our reasons through the decision:

[1171] In relation to PC1 as a whole, we have identified reasonably practicable options and evaluated them in some detail in many cases. We have assessed the efficiency and effectiveness of the provisions both individually and holistically and are satisfied that they are the most

appropriate way to achieve the objectives. The provisions reflect the importance of practicability and the need to allow elements of discretion for WRC when applying them when starting a journey as challenging and uncertain as that required to deliver Te Ture Whaimana. We find that the risk of not acting in accordance with the provisions as amended by our decision would be significantly greater than the risk of acting.

[676] WRC then stated:

[22] Those evaluations apply to the changes required by the Interim Decision and do not need to be revisited (addressed in WRC's memoranda dated 4 and 8 August 2025). WRC has adopted a similar approach in relation to its proposed changes to the PC1 provisions resulting from the Court's Minutes dated 15 and 19 September 2025.

...

[24] The section 32AA assessment carried out by WRC focuses on the more substantive changes that are the subject of the Court's directions since the Interim Decision and includes some qualitative content. In considering the extent of change, the WRC has considered changes in expectations placed on the farming community, changes in both geographical extent and the application of PC1 provisions to activities, as well as temporal change, such as different timeframes to undertake mitigation activities.

[677] WRC addressed two changes it considered to be significant: changes to the stock exclusion provisions and the potential adoption of an alternative to the use of Overseer for reporting on nitrogen losses, which it described as the "FEP-method". In relation to the Court's noting²⁰⁷ that it will be necessary for WRC to reconsider the plan provisions, and assess whether, as a whole, the plan provisions work as intended and are practical and efficient to implement, it stated:

[29] WRC has undertaken that assessment, primarily as a part of the review of the wording of PC1, which was submitted in WRC's previous memorandum. This recheck of plan provisions has included input from WRC's implementation team and has specifically considered whether there is an appropriate degree of certainty in the provisions, whether the restrictions on discretion and matters of control are appropriate, and that the entry criteria and cascade of rules work as intended. Further, the policy positioning has been reviewed to ensure that it provides adequate guidance both to applicants and decision-makers.

²⁰⁷ Court's Minute dated 19 September 2025 at [8].

[30] Through this review, WRC has respected the considerable work that all parties have put into the current version. The wording has been tested and improved through input from a range of parties and WRC is satisfied that the provisions are able to be effectively implemented and will be a positive step towards achieving Te Ture Whaimana. WRC is satisfied that the provisions are integrated and do not have unintended consequences, such as farming activities having an activity status unrelated to the risk of contaminant losses from those activities.

[678] The lack of any demonstrated consideration of key policy decisions in accordance with s 32 was a serious omission in the case provided by WRC and necessitated a substantial amount of additional work for the Court before we could make our determinations. WRC has relied on that work in its updated s 32AA evaluation.

[679] Having reviewed that evaluation, we are satisfied that WRC has taken on board the concerns we raised about previous ss 32 and 32AA evaluations and appropriately addressed them. We consider the evaluation process undertaken addressed the relevant statutory requirements, appropriately described the issues and options needing to be considered and stating the reasons for its findings. We agree with and accept the evaluation outcomes and reasoning.

C2 Scope

[680] We addressed scope under each individual direction and find that the provisions included in PC1 Final and directed in this decision are within scope

C3 Need for a s 293 process

[681] HortNZ reserved its position regarding the need for a s 293 process as discussed under the issue of scope in Direction 18. We are satisfied that Overseer remains suitable for use with some forms of CVP, that there is no scope to remove Overseer and that it would not be appropriate, efficient or effective to direct a s293 process to remove its use, which would result in a further prolonged delay in PC1 becoming operative. No other party raised the need for a s 293 process and we find there is no requirement for one.

C4 Provision of guidelines

[682] The Court placed considerable emphasis through the appeals process on ensuring the provisions are as “clear on their face, certain, workable, practicable, enforceable and as equitable as possible”. However, region-wide plan provisions cannot address every circumstance that exists on the 5,000 or so individual farms in an environment as diverse as the Waikato region and guidelines on how to address different circumstances will be an essential part of plan implementation. We do not need to expand on that in any detail here, but examples in our stock exclusion minute dated 19 September included:

[19] We ... consider it to be essential that WRC provides clear guidance at the time PC1 becomes operative on what farmers and growers are required to do to comply with PC1 and to provide clarity to ensure that Certified Farm Environment Planners have a consistent basis on which to certify FEPs. We direct WRC to confirm what information it will provide.

...

[127] We are of the view that WRC must provide greater clarity as to what FEPs must cover to remove the uncertainty that clearly and understandably exists in the minds of the farming community. It is also necessary to ensure that all farms are treated the same, as far as that is achievable, and consent processing officers have clear directions to ensure consistent decision-making. We direct WRC to propose at least a framework for a guidance document that sets clearer parameters within which FEPs are to be prepared.

[683] In the Second Interim Decision, we stated that it will be important that the requirement for farming activities to implement mitigation measures as soon as practicable is clear to all parties.²⁰⁸ We went on to say:

[53] This will require consideration of what is reasonably able to be done to reduce the risk of incidental discharges of the primary contaminants and reduce the risk of the s 70 effects occurring, taking into account “money, time or trouble” in accordance with the above Court decision. Within that framework, the timing of mitigations should be sequenced to prioritise those that will contribute most to reducing degradation in the particular circumstances that exist in the sub-catchment. The guidelines will need to be as clear on their face, certain, workable, practicable, enforceable and as equitable as possible.

²⁰⁸ Second Interim Decision at [51].

[684] No guidelines were available for consideration during the hearings, other than an existing CSA guideline document. While their availability for consideration before the issue of our final determination would have been helpful, we accept that would have been difficult before the final provisions were known. Further, the guidelines are matters for WRC, not the Court, and can be expected to change over time.

[685] In the consultation document included in its 25 November memorandum, WRC referred to the above paragraph [19] in the 19 September minute and agreed that clear guidance was required. However, it noted that:

[35] ... It is important to recognise that guidance is not binding, hence WRC's primary and current focus is on ensuring that PC1 is both clear and enforceable. Once the content of PC1 become clearer, WRC implementation staff expect to rapidly progress guidance in consultation with industry representatives.

[686] That focus is reflected in the amended provisions included in PC1 Final and we are satisfied that they are as clear on their face, certain, workable, practicable, enforceable and as equitable as possible and are the most appropriate to achieve the objectives of PC1.

[687] In terms of the guidance to be provided, WRC indicated that it will likely be made up of multiple guidance related documents that users can engage with at the level appropriate to their role, expertise, or immediate need. It stated it truly values and appreciates the ongoing input from sector groups and farmers, citing two recent examples. This will be important in view of the concerns expressed by farming parties at different times through the appeals process about the importance of guidelines being expressed in terms that farmers understand.

[688] In relation to the guidance framework it was intending to use it stated in the consultation document:

[43] WRC's previous engagement with farmers and industry about PC1 implementation has been framed according to the typical "journey" a farmer would make from awareness of PC1 through to auditing of the FEP. The following is a summary of the information WRC intends to provide to

farmers, growers, and CFEP, based on the feedback received from farmers, industry and rural professionals to date. The purpose of this information is to make known exactly what is required for compliance and certification, based on that journey. It will be supported by face-to-face engagement activities, media and regular communications.

[689] We do not repeat the detail here but are satisfied that WRC's proposed approach addresses the concerns we raised through the appeals process and that it has recognised the importance of providing the guidance in a way that will most appropriately assist user's understanding.

[690] In relation to the extent of information to be shown on aerial photographs and FEP maps, WRC stated it considered that features should generally be mapped only to the extent that they may be relevant to the FEP and we agree. However, it stated that Schedules D1 and D2 currently require all Clause 4 waterbodies be identified, even those where stock exclusion is not required, including related features like stock crossing points and existing riparian planting and that it had not identified any appeal points which might support such changes.

[691] We addressed this in part under Directions 20 and 21 under the sub-heading "Scope to limit water bodies that need to be identified and mapped in an FEP to those that require stock improvement" after it was raised by the JFP.²⁰⁹ As noted under those Directions, we are satisfied that there is scope and we directed WRC to amend Schedules D1 and D2 to reflect the amendment sought by Federated Farmers. Unless actions are included in a farm's FEP to prevent stock access to a stream during the term of PC1, there should be no requirement to show it or any related feature referred to by WRC on maps included in the FEP.

[692] We noted WRC's sections on remedies for non-compliance, farmer information and slope map layer development methodology and accept them as matters for WRC, without the need for further comment from the Court.

²⁰⁹ WRC's memorandum dated 25 November 2025, Appendix C, JFP's response to WRC consultation document dated 19 November 2025 from [19].

C5 Our overall evaluation

[693] We have set out our evaluation of different matters remaining in dispute under the relevant Direction headings above. Our overall evaluation is that, subject to making the amendments set out at A at the start of this decision to the satisfaction of the Court, the amended provisions in PC1 Final satisfy the directions in the First Interim Decision and are the most appropriate to achieve the Objectives of PC1 and to contribute to Te Ture Whaimana and, thereby, to achieve the purpose of the RMA.

[694] We are satisfied that the permitted activity standards, in combination with other provisions of PC1, will contribute to a reduction in s 70(3) effects within 10 years and that the permitted activities enabled by PC1 Final satisfy the requirements of s 70 of the RMA.

C6 Final directions

[695] WRC is to submit amendments to the Court as set out at A within 30 working days of the date of this decision.

For the Court:



D A Kirkpatrick
Chief Environment Court Judge | Kaiwhakawā Matua



Attachment 1

Chronology

(a)	Interim Decision issued	28 May 2025
(b)	Initial responses received by Court as directed ²¹⁰	27 June
(c)	Minute clarifying matters raised in initial responses, setting out the anticipated process to finalise determination of the appeals, noting that was likely to be affected by any changes to ss 70 and 107 of the RMA, and directing that a Judicial Telephone Conference (JTC) would be held in late August/early September	8 July
(d)	WRC memorandum responding to matters raised in the 8 July minute	18 July
(e)	WRC memorandum setting out substantive responses to directions in the First Interim Decision, following consultation with other parties, including an updated version of PC1 at same date	4 August
(f)	Responses to WRC's consultation document from parties ²¹¹ attached to the memorandum	
(g)	Memoranda from parties responding to future programming as directed in the 8 July minute	15 August
(h)	Current amended version of s 70 of the RMA came into force	21 August 2025
(i)	Minute issued setting out an agenda for the JTC	27 August
(j)	JTC	3 September
(k)	Minute issued following the JTC in relation to "general matters" discussed at the JTC with further directions	15 September
(l)	Minute issued following the JTC in relation to stock exclusion with further directions	19 September
(m)	WRC memorandum with substantive responses to 15 September "general matters" minute based on parties' responses to that date	31 October
(n)	WRC supplementary memorandum with further substantive responses to 15 September "general matters" minute after consideration of other responses from parties	17 November
(o)	WRC memorandum responding to 19 September stock exclusion memorandum	25 November

²¹⁰ From CNI Iwi Land Management Limited (**CNI**), Director-General of Conservation, Fish and Game, Lochiel Farms Limited, Mr Pinnell, Waikato and Waipā River Iwi, Wairakei Pastoral Limited (**WPL**) and WRC.

²¹¹ As above, plus Bathurst Resources Limited, Beef and Lamb and Federated Farmers (**JFP**), Hamilton City Council, HortNZ, Matamata, South Waikato, Taupo and Waipā District Councils, Oji Fibre Solutions Limited and Waikato River Authority (**WRA**).

(p)	Responses to WRC's consultation document from parties attached to the memorandum ²¹²	
(q)	Submission of WRC independently reviewed "Final consolidated PC1 version 1 December 2025 (PC1 Final)"	1 December
(r)	Responses to "PC1 Final" from Fish and Game, Lochiel, Mr Pinnell, WPL	
(s)	Response Table with parties' feedback and WRC response on "PC1 Final"	
(t)	WRC memorandum relating to s 32AA of the RMA	5 December
(u)	Second Interim Decision relating to the current (amended) version of s 70 of the RMA issued, with directions to parties to identify any further evidence they consider needs to be provided and to identify any matters of fact, expert opinion or law of direct relevance to our s 70 evaluation that they consider have been omitted or not been interpreted or referenced appropriately.	27 February 2026
(v)	Memoranda from parties in response to Second Interim Decision	20 March and 17 April

²¹² From Director-General, Fish and Game, JFP (two parties), Lochiel, Mr Pinnell, Waikato and Waipā River Iwi and WRA.

Attachment 2

Corrigendum to the first Interim Decision dated 28 May 2025

[1] In view of the complex circumstances in which PC1 had been developed, we invited submissions from parties on whether they considered our first interim decision contained any matters of fact, expert opinion or law of direct relevance to the issues that had been omitted or not been referenced appropriately. We also invited parties to consider whether there were any matters remaining in dispute that were not addressed by the interim decision.

[2] As a result of the responses received from parties by memoranda dated 27 June 2025, the following corrections are made to the first interim decision, with additions underlined and omissions struck through.

[3] Footnote 30 (to para [58]) is amended to read:

The WRA has 10 members appointed by the river iwi and Ministers of the Crown and its primary purpose is set the primary direction to restore and protect the rivers.

[4] Footnote 58 (to para [56]) is amended to read: "Te Arawa, for the purpose of the Waikato River legislation, means the Affiliate Te Arawa Iwi/Hapū of Ngāti Tahu-Ngāti Whaoa, Ngāti Kearoa-Ngāti Tuara, and Tūhourangi-Ngāti Wāhiao",

[5] Paragraph [574] is amended to read:

~~No party appealed this provision. WPL's appeal sought the deletion of Schedule D1, Part D clause 2.~~

[6] Paragraph [786] is amended to read:

[786] The Director-General's submission did not address costs or overall efficiency ~~and the assertion~~ but asserted that a 10 m set-back provides optimum water quality benefits ~~was not supported by evidence.~~ Mr Counsell stated in his evidence for the Director-General that an "estimate of the costs of the D-G's setback proposal would also need to be compared against the benefits." ... "Many of these benefits can be quantified in monetary terms using tools of economic analysis. Due to time and data constraints, I have not quantified these benefits in

my evidence.” He referred to a 2017 study²¹³ which quantified the benefits and costs on riparian setbacks across all permanent rivers and streams in New Zealand running through primary sector land, noting that “Their analysis also shows positive net benefits (benefits minus costs) for all of the territorial authorities in the Waikato Region, for each of 5, 10, 20 and 50 metre setbacks.”

[786a] While noting that evidence, the Court directed specific expert conferencing to enable us to assess benefits and costs of different fencing, buffer zone and setback mitigation options under consideration in PC1, based on the best available information relevant to the Waikato and Waipā River Catchments. Mr Counsell and Mr Bradshaw participated on behalf of the Director-General. We prefer the locality specific evidence provided by the expert conferencing to generic information in a referenced paper where there was no opportunity for parties to cross examine or the Court to question the authors to establish the assumptions or evidential veracity. We also took into account the relevant evidence of farming witnesses and we are satisfied the reference to Mr Counsell’s evidence on the topic does not change our findings.

[786b] We also record that when making its determination in relation to buffer distances, the Court considered the evidence of Ms McArthur cited by counsel for the Director-General in its memorandum dated 27 June 2025 as well as all other relevant evidence.

- [7] Paragraph [805], third sentence is amended to read:

While Fish and Game ~~Forest and Bird~~ sought ...

- [8] Paragraph [834], second sentence is amended to read:

While we accept the validity of the concerns expressed by both the Director-General and Fish and Game ~~Forest and Bird~~, we consider ...

- [9] Paragraph [859], first sentence, is amended to read:

We were provided with limited ~~no~~ evidence ~~of any kind~~ to demonstrate what environmental enhancement, if any, would result from such fencing of wetlands, particularly those as small as 50 m² in area,

- [10] Paragraph [896], second paragraph, is amended to read:

We were unable to find appeals requesting this Appeal by Federated Farmers and Beef and Lamb sought the deletion of Schedule C clauses 6 to 9.

²¹³ Adam J. Daigneault, Florian V. Eppink, and William G. Lee (2017), “A national riparian restoration programme in New Zealand: Is it value for money?”, *Journal of Environmental Management*, 187, 166-177.

[11] In paragraph [970] there are two references to “...effects on the River and on the River Iwis’ relationships with it”. These are both amended to read “...effects on the River and on the River Iwi’s relationships with it”.

[12] Paragraph [995], first sentence, is amended to read:

Fish and Game Forest and Bird sought ...

[13] Paragraphs [1037] and [1039] refer to the "WRA iwi and CNI". These are amended to read, “Waikato River Iwi and CNI”.

[14] Paragraph [1106] is superseded by the amended version of Standard 3 in Schedule C of WRC’s Final Proposal discussed in paragraph [43] of this minute.

[15] Paragraph [1120] is amended to read:²¹⁴

We understand that Federated Farmers and Beef and Lamb and Lochiel Farmlands Limited support the amendments⁵³⁵ but Mr Pinnell does not, but we do not fully understand the reasons for the different views.⁵³⁶

[16] Where the terms “Waikato and Waipā River Iwi”, “Waikato and Waipā Iwi” “Waikato River Iwi”, “Waikato River iwi”, “River Iwi”, “River iwi” and “river iwi” are used throughout the Interim Decision, these are replaced with the single defined term which is “Waikato and Waipā River Iwi”.

²¹⁴ Footnote 535 is amended to read “Memorandum dated 16 and 13 September 2024 respectively.”