

**BEFORE INDEPENDENT HEARING COMMISSIONERS**

**AT HAMILTON**

**IN THE MATTER**

of the Resource Management Act 1991

**AND**

**IN THE MATTER**

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

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**STATEMENT OF PRIMARY EVIDENCE OF GERARD MATTHEW WILLIS  
FOR FONTERRA CO-OPERATIVE GROUP LTD (SUBMITTER 74057)**

**BLOCK 3 HEARINGS - PLANNING**

**5 JULY 2019**

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**RICHMOND**  
CHAMBERS

**Counsel Instructed**  
B J Matheson  
Richmond Chambers  
PO Box 1008  
Shortland Street  
Auckland 1140

## 1. EXECUTIVE SUMMARY

1.1 My name is Gerard Matthew Willis. My planning evidence addresses issues related both to Fonterra's farming interests that are relevant to the Block 3 hearing.

1.2 My evidence makes the following points.

(a) I do not agree with the changes proposed to Schedule 1 (specifying the contents of a Farm Environment Plans (**FEPs**)) because FEPs prepared under that Schedule would be too discretionary to apply to a permitted activity Rule 3.11.5.3. As I stated in my Block 2 evidence, I support the retention of Rule 3.11.5.3 as a permitted activity rule operating under a certified industry scheme (**CIS**) framework.

(b) When considering permitted activities, it is important to distinguish between the concepts of *certainty* (as to requirements) and that of *assurance of effectiveness*. Permitted activity rules require a high level of certainty. In my opinion, Schedule 1 can be drafted such that there is absolute certainty as to what must be satisfied for an activity to be permitted (ie. that the FEP must contain specific matters). Assurance of effectiveness is a section 32 matter. In my opinion, Schedule 1, and the wider set of rules within which it operates, can be drafted to provide a high level of assurance of effectiveness of FEPs. The specificity with which requirements are expressed, the role and expertise of the certified farm environment planner (**CFEP**) and the certification, audit and review processes are central to providing that assurance. While a small level of discretion (in the form of expert judgment) may persist as to exactly how certain requirements are implemented in practise, that is not fatal to the viability of a permitted activity rule, particularly if the range of alternative options are clearly described within Schedule 1.

(c) To ensure that FEPs can operate appropriately with a permitted activity framework, some changes should be made to Schedule

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1 to, in contrast to the recommendations of the s42A report, further reduce and limit discretion to be exercised by the CFEP. I have attached a revised Schedule 1 to this evidence (**Attachment A**) that, in my opinion, meets the standard of certainty required for a permitted activity and which, when considered within the wider rule framework, provides a high level of assurance of effectiveness.

- (d) Policy 7 on “future allocation” has no meaningful value to the implementation of PC1 and I support its deletion consistent with recommendation included in the s42A Report.

## **2. INTRODUCTION**

- 2.1 My full name is Gerard Matthew Willis.
- 2.2 I am a director of Enfocuss Limited, a resource management consultancy based in Pukekohe. I have practised as a planner and resource management specialist for the past 30 years.
- 2.3 I have the qualifications and experience set out in my statement of evidence I presented at the Block 1 hearing.

## **3. BACKGROUND TO PROPOSED CHANGE 1**

- 3.1 My involvement in PC1 commenced in October 2016 following its public notification. I was initially engaged to assist with the preparation of a submission on behalf of Fonterra. In my capacity as independent planning adviser I worked with staff from Fonterra.
- 3.2 I was engaged in the same capacity in April 2018, to assist Fonterra with its submission on Variation 1.
- 3.3 I am familiar with the provisions of the PC1 to which these proceedings relate. In preparing my evidence I have reviewed the following documents:
- (a) Waikato Regional Plan Change 1 – Waikato and Waipā River Catchments: Section 32 Evaluation Report;

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- (b) Section 42A Report Proposed Plan Change 1, Waikato and Waipā River catchments, Block 3 (Parts C7-C9);

3.4 I have also read the evidence of Mr Richard Allen (Environmental Policy Manager, Fonterra).

#### **Code of Conduct**

3.5 Although this is a Council hearing, I have read the Environment Court's Code of Conduct and agree to comply with it. My qualifications as an expert are set out above. I confirm that the issues addressed in this statement of evidence are within my area of expertise.

#### **Scope of Evidence**

3.6 I have been asked to provide planning evidence on the following matters and structure my statement accordingly:

- (a) Schedule 1 of PC1 and that schedule's suitability for describing FEPs that may be specified as a condition of a permitted activity;
- (b) Policy 7 (preparing for future allocation).

3.7 Where in this evidence I provide suggested redrafting of provisions:

- (a) Text in blue underscored font is as proposed by me and is consistent with that used in the Fonterra submission.
- (b) The red underscored font is text proposed in the s42A Report.

3.8 I can confirm that, on the basis that the s42A Report recommendations are accepted by the Hearing Panel, acceptance of the amendments detailed in this evidence would satisfy Fonterra's submission and further submission in relation to those parts of the submission addressed by this Block 3 hearing.

#### **4. RELEVANT STATUTORY INSTRUMENTS**

4.1 I agree with the identification of relevant statutory instruments as set out in Section 3 of Part A of the s42A Report and more fully in Part A of the

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Section 32 Report. Except as I might otherwise state in this evidence, I agree with the assessment contained in s42A Report. In my opinion, at least insofar as the matters raised by the Fonterra submission are concerned, PC1 gives effect to, is not inconsistent with, or takes into account (as applicable), the various relevant statutory instruments.

## **5. OVERVIEW OF FONTERRA'S SUBMISSION ON SCHEDULE 1**

5.1 The Fonterra submission is generally supportive of Schedule 1 as notified. It seeks limited changes to address the issues raised here. That is, to ensure the Schedule is suitable for use in a permitted activity framework.

5.2 In particular, it sought deletion of the reference to the NRP able to be exceeded if "suitable mitigations are specified". Clearly such a provision lacks certainty and implies a wide degree of discretion.

5.3 The submission does not itemise all the detailed matters now proposed in the version of Schedule 1 attached as Attachment A. The need for those detailed amendments has become clear as the hearings have progressed and the nature and extent of concern about use of FEPs within a permitted activity framework have been raised in the s42A Report.

5.4 Despite that, I consider that the greater level of specificity now proposed in Attachment A is consistent with the intent of Schedule 1 as notified.

## **6. PERMITTED ACTIVITIES**

### **Certainty test**

6.1 It is a well-accepted principle of planning practice that there needs to be a high level of certainty regarding what is, and is not a permitted activity. I understand that to mean that a resource user must be able to clearly determine whether the activity they are undertaking, or intend to undertake, is, or is not, permitted without consent. Qualification as a permitted activity should not rest on a discretionary judgement of the consent authority (that would be to render a permitted activity a quasi-consent).

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6.2 A resource user needs to be able answer some simple questions to confirm whether the activity is permitted. These include:

- (a) Does my activity comply with any locational, design, intensity, scale or timing requirements of the rule (as determined by the activity description and activity conditions)?
- (b) Will my activity generate an adverse effect that a standard of the permitted activity rule states it may not have?
- (c) Have I done/provided the things the rule requires me to do/provide?

6.3 In the context of the Rule 3.11.5.3 and the condition requiring an FEP, in my opinion the simple certainty test can be easily met. Two matters are relevant:

- (a) Does the farmer have an FEP?; and
- (b) Does that FEP contain those matters specified in Schedule 1 as being required to be so included?

6.4 Provided the requirements are clearly stated in Schedule 1 are largely non discretionary then the test of certainty is easily met. While there are aspects of Schedule 1 as notified that imply a degree of discretion in terms of the required content, I consider those matters can be readily addressed (principally by minor redrafting to remove terms such as “appropriate” and “suitable”). These terms can be removed as a part of new wording that would better define what action, or range of actions, would be “appropriate” or “suitable”.

**Assurance of effectiveness test**

6.5 The larger issue, and the one I believe other parties may be focused on, is whether the actions required by the FEP (as approved by the CFEP) will be *effective*. That is a related but, in my opinion, quite a separate test to the question whether the requirements are certain. Rather than being a question of clarity of drafting, this second test goes to the *merits* of the

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contents of an FEP and to the confidence that the public can have in that FEP.

- 6.6 Put simply, it is straightforward to require the FEP to specify, for example, “actions” in relation to a known risk. An FEP that specifies actions (any actions) would comply with that requirement. However, I accept that providing assurance the actions so included in an FEP are appropriate (i.e. will effective) is important for public confidence in the regional plan and for the achievement of plan objectives. A permitted activity rule that relies on generally expressed (non-specific) obligations would not be tenable (in part because it could not be enforced and could lead to widely inconsistent performance land managers).
- 6.7 On the other hand, as Mr Matheson explained at the Block 2 hearing, there is caselaw that suggests that the permitted activity test does not mean that there can be *no* discretion.
- 6.8 In my opinion the extent of any discretionary judgement that will be appropriate is strictly limited - and generally confined to the application of *technical expertise* such that two separate experts would likely reach the same conclusion as to whether a permitted activity condition is met (even though they might prefer slightly different responses to particular technical challenges).
- 6.9 Also, it is clear that the role of the CFEP is to provide that technical expertise – not some vague discretionary judgement, but expert interpretation of the actions a farmer should take in response to known and identified risks of contaminant loss. The technical expertise needs to be applied within clear parameters. If there is not confidence that an CFEP can objectively and consistently exercise that technical judgement then, frankly, there is little point in given them any role in the plan implementation.
- 6.10 As I explained at paragraph 6.35 of my Block 1 evidence, there are safeguards in the planning framework of PC1 to ensure that CFEPs are expert and to ensure that FEPs are competently prepared and audited

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(using the processes agreed through certification of industry schemes or, where necessary resource consent processes).

## **7. SCHEDULE 1 - CONTENT OF THE FEP**

7.1 For the reasons set out in section 6 above, I consider that Schedule 1 can, and should, be amended to ensure it is suitable for use in the context of a permitted activity rule.

7.2 I provide a proposed mark-up of Schedule 1 in Attachment A to this evidence. That mark-up has been prepared by applying the following general principles:

- (a) To address the fully range of known and common contaminant risks, quantified/numeric standards relating to farm inputs and practices should be specified where ever feasible.
- (b) If more than one response to a particular known risk is possible, Schedule 1 should enable any one of the potential (specified) responses to be used (that is because some responses may be more feasible on some farms than others). Providing a range of potential responses, each of which is an effective option for addressing the effect of concern, provides both sufficient certainty for the user and the regulator, and flexibility for the user.
- (c) References to accepted codes of practice (and a requirement to comply with them) should be included where relevant (on the basis that CFEPs have the expertise to confirm that an FEP complies with such codes).
- (d) To the extent that some farms may present specific risks outside of the common risks addressed in (a), a risk assessment should be required and bespoke responses identified by the CFEP (within tightly defined parameters). This is on the basis that if all on-farm risks were knowable in advance, a FEP would not be required - standards could be directly included as conditions of the permitted activity rule). That fact that there will need to be actions and measures identified that are specific to particular



farms and farm systems that cannot be predicted in detail by the permitted activity rule, is the very reason FEPs are necessary for managing farming activities.

- 7.3 The approach is to minimise the discretion able to be applied by a CFEP (essentially limiting that discretion to expert judgment within defined parameters). In my opinion, it would be wrong to remove the role of the CFEP entirely. As noted above, if there was no expert judgement to be applied then there would be no value in having CFEPs at all. The point of having CFEPs is to ensure the FEPs are of a high standard and include effective actions and mitigations. Similarly, the point of having FEPs is to acknowledge that farms do not always fit “cookie cutter” solutions. The challenge then is to define a regulatory system that recognises that without imposing an unworkable regulatory burden.
- 7.4 The mark-up included as Attachment A, has been prepared relying on technical advice provided by Mr Allen. In particular, I have relied on Mr Allen’s expertise to identify the large number of specific performance measures (often quantified performance standards or specific practices) that have greatly enhanced the specificity around what each FEP will contain in terms of the “actions” required to be undertaken in response to particular predictable risks.
- 7.5 In my opinion it is important that planners and decision-makers strive to make FEPs work within permitted activity rules. That is because if we cannot achieve that the implication is that all farms everywhere in New Zealand must either operate without an FEP or be subject to consent. Both those options would have significant implications for future planning practice, effective management and council resourcing.

## **8. IMPLICATIONS FOR RULES**

### **Need for new Rule 5.11.5.3A**

- 8.1 My proposal would make Schedule 1 significantly more prescriptive. One consequence of that added prescription is that some farms may not be able (or may choose not) to comply with one or more of the specific performance standards and will not include those standards in their FEP.

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8.2 My proposal to deal with that situation is to create a new controlled activity Rule 3.11.5.3A. That rule would require a farmer to apply for consent to undertake the farming activity that does not include an FEP that complies with requirements in Schedule 1. Control would be reserved to that aspect of Schedule 1 that was not complied with. For example, a farm that did not provide a fenced setback from a river compliant with Schedule 1 would become a controlled activity but control would be limited to the practice of, and adverse effects from, allowing stock within the required setback.

8.3 Such a rule could be worded as follows:

**Rule 3.11.5.3A Controlled activity Rule – Farming without a farm environment plan fully compliant with Schedule 1**

The use of land for farming, that is not a permitted activity under Rules 3.11.5.1 or 3.11.5.2 and cannot meet condition 5 of Rule 3.11.5.3 is a controlled activity subject to the following conditions:

1. The property is registered with the Council in conformance with Schedule A; and
2. A Nitrogen Reference Point is produced for the property in conformance with Schedule B; and
3. Cattle horses deer and pigs are excluded from water bodies in conformance with Schedule C; and
4. The farming activities do not form part of an enterprise; and
5. No commercial vegetable production occurs; and
6. Full electronic access to Overseer or any other software or system that models or records diffuse contaminant losses for the farming land use authorised by this rule is granted to the Council; and
7. A Farm Environment Plan has been prepared in accordance with Schedule 1 and has been approved by a Certified Farm Environment Planner as meeting Parts A, B and C of that schedule except to the extent that one or more of the matters listed in Part C are not included in the FEP.
8. The FEP described in condition 6 is provided to the Council at the time the resource consent application is lodged; and
9. The Nitrogen Reference Point is not exceeded; and
10. There has been less than a cumulative net total of 4.1 hectares of change in the use of land from that which was occurring at 22 October 2016 within a property or enterprise from:

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- a. Woody vegetation to farming activities; or
- b. Any farming activity other than dairy farming to dairy farming; or

Waikato Regional Council reserves control over the following matters:

- i. The standard or requirement of Part C of Schedule 1 with which the FEP does not comply, the risk and potential effects sought to be addressed by that standard or requirement, and the alternative actions and timeframes to address that risk and manage that adverse effect.
- ii. The content of the FEP, compliance with and auditing of the FEP implementation insofar as it is affected by i. above
- iii. The term of the resource consent
- iv. The timeframe and circumstances under which the consent conditions may be reviewed

#### **Implications for Rule 3.11.5.4**

- 8.4 In my opinion, activities seeking RDA consent under Rule 3.11.5.4 should have to meet essentially the same Schedule FEP requirements as activities authorised under Rules 3.11.5.3 and 3.11.5.3A. The permitted/controlled status under the later rules being justified because of the additional support and oversight offered by the Certified Industry Scheme (CIS) (and the wider benefits of incentivising the development and uptake of these schemes).
- 8.5 Despite that, I consider that should a farmer seeking consent under Rule 3.11.5.4 wish to depart from one of the prescriptive measures specified in Schedule 1 (as I proposed it) ought to be able to have that departure considered within the RDA consent application provided that the departure from the FEP “standard condition” is certified by the CFEP. As proposed in the Block 2 s42A Report an application under Rule 3.11.5.4 that failed to have a fully Schedule 1 compliant FEP would require a full discretionary consent. In my opinion that is unnecessary. A departure for the Schedule 1 standards and requirements I proposed should be able to be considered within the RDA consent application.

## 9. S42A REPORT VERSION OF SCHEDULE 1

- 9.1 The marked-up version of Schedule 1 attached to the s42A report includes as its core, Part B which sets out the content of an FEP. That part appears to require the specification of actions in an FEP where existing practices are “inconsistent with” the achievement of objectives and principles listed in that Schedule.
- 9.2 By design, the proposed approach involves a high degree of discretionary judgement to be exercised by the person preparing an FEP. In short, they must consider the objectives and principles and decide whether what is undertaken on the farm is consistent with those objectives and principles or whether some other action is required (and, if so, what that alternative action should be). Some of the principles are clear; others require the broad exercise of discretion. Still others (for example, stock exclusion) seem to be internally conflicting<sup>1</sup>.
- 9.3 I understand that that level of discretion is unproblematic in legal terms because oversight is provided by the consent process under the s42A Report proposal. While I accept that point, I also note that this creates a very significant burden on the regional council consent processing system. Each FEP accompanying an application will need to be separately verified as to its conformity with Schedule 1 (and, I might add, a farm visit to ‘ground truth’ the plan and its claims). If it is not, the consent process will have provided no benefit at all relative to a permitted activity framework. In that regard the discretionary FEP and consenting approach proposed by the s42A Report would seem to double-up on FEP verification and duplicate cost.
- 9.4 Moreover, in my opinion there must also be less certainty with the regard to the outcome from the FEP process and no surety of consistency of approach across farms. Each FEP could be slightly different as it emerges through a consent process. The s42A proposed Schedule implies that Council could not apply a blanket approach and it would need to carefully assess each FEP as part of each application. In other words,

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<sup>1</sup> Principle 12 implies a broad discretion is able to be exercise over how much stock exclusion is required where. Principle 13 seems to require observance with Schedule C which is prescriptive in nature. It is not clear which principle prevails.

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the approach would seem to be to let each consent processing officer undertake their own process of converting the principles into actions. This would occur over literally thousands of farms and over many years potentially leading to diverging and evolving practice. In my opinion, Fonterra's approach of converting principles to actions now (insofar as possible) is a preferable planning approach that provides greater certainty and equity of treatment across the catchment and over time. Flexibility still exists, as is appropriate, but through the controlled activity consenting route.

## **10. POLICY 7 – FUTURE ALLOCATION**

- 10.1 Policy 7 seeks to set the direction for a future allocation approach for further diffuse discharge reductions. Fonterra's submission largely opposes Policy 7. It does so on that basis that the policy is premature and unnecessary and provides little certainty since it could be amended as part of any future plan change that sought to introduce an allocation regime (i.e. it is not an RPS policy and a future plan change would not be bound to give effect to it).
- 10.2 I agree with Fonterra's submission on Policy 7. I also support that points made in the s42A Report (paras 479 – 482) that much is likely to change in the period between now and the time an allocation system is introduced in the Waikato catchment. In particular:
- (a) Central government is likely to have issued some form of direction of allocation policy (allocation is a work stream of the current Essential Freshwater programme)
  - (b) Tools for measuring and modelling diffuse discharges, and for assessing land characteristics and diffuse discharge risk are likely to be developed or further enhanced
  - (c) Our understanding of N attenuation below the root zone is likely to be improved – opening up approaches to allocation that do not currently exist.

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- 10.3 In my opinion in the current evolving environment it would be unwise to express a predetermined view about the shape of policy 10 years hence.
- 10.4 For those reasons I agree with the s42A report that Policy 7 should be deleted. I note that Fonterra's submission did support the retention of a much more narrowly focused policy 7 (one that focused purely on information gathering) but I consider such a policy would add nothing substantive to the planning framework.



**Gerard Matthew Willis**  
5 July 2019

**Attachment A**

*Note: The amendments proposed for Schedule 1 are extensive and hence are presented here as a “clean copy” only.*

**SCHEDULE 1A - REQUIREMENTS FOR FARM ENVIRONMENT PLANS**

The Farm Environment Plan (FEP) will be prepared and provided in accordance with Parts A-C below. Progress with implementation will be monitored in accordance with Part D (where the FEP is required as a condition of resource consent). Any change to an FEP must be made in accordance with Part E.

**Note:** *A person seeking to operate in accordance with permitted activity Rules 3.11.5.2 or 3.11.5.3 must have an FEP consistent with all parts of this Schedule, and must undertake the actions described in the FEP. A farming activity that has an FEP that does not comply with this schedule, or which is undertaken in a manner that does not comply with the FEP will not meet the conditions of the permitted activity rule and an application for resource consent will be required.*

**PART A – PROVISION OF FEP**

An FEP that has been certified as meeting the requirements of B below by a Certified Farm Environment Planner (CFEP), must be submitted to Waikato Regional Council (the council) using either:

1. A council digital FEP tool that includes the matters set out in Part B below to the extent relevant; OR
2. An industry digital FEP tool, capable of recording information consistent with the council data exchange specifications that includes the matters set out in Part B below to the extent relevant.

*The Waikato Regional Council data exchange specifications will set out the standards and detail of the data exchange process to be used by external industry parties in the provision of FEPs.*

**PART B – CONTENT OF AN FEP**

The FEP shall contain:

1. The property or enterprise details:

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- a) Full name, address and contact details (including email addresses and telephone numbers) of the person responsible for the land use activities;
  - b) Legal description of the land and any relevant farm identifiers such as dairy supply number.
2. A map(s) at a scale that clearly shows:
- a) The boundaries of the property or land areas being farmed;
  - b) The boundaries of the main land management units or land uses on the property or within the farm enterprise;
  - c) The location of any Schedule C waterbodies;
  - d) The location of riparian vegetation and fences adjacent to water bodies;
  - e) The location on any waterways where stock have access or there are stock crossings;
  - f) The location of any critical source areas and hotspots for contaminant loss to groundwater or surface water; and
  - g) The location(s) of described actions and practices to be undertaken.
3. Description of whole farm management practices and general requirements
- a) Identification and description of the key characteristics of the farm system including all inputs, outputs and management practices
4. Based on 3 above, and on an identification and assessment of all sources of sediment, nitrogen, phosphorus and microbial pathogens, a description of:
- a) the farming practices (including the management actions for critical source areas) that are consistent with the standards and requirements as set out in Part C and a commitment to continue those practices and actions;
  - b) the farming practices (including the management actions for critical source areas) that are not consistent with the standards and requirements as set out in Part C and a commitment to adopt the required practices and actions as soon as practicable and in no instance shall that exceed 4 years from the date the FEP is required by this plan or 2026, whichever is earlier.



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- c) any risk of contaminant loss on the farm that would not be managed by the standards and requirements as set out in Part C and any additional practices and actions that may be required to address that risk.

## **PART C – STANDARDS AND REQUIREMENTS**

### **1. Nutrient management**

- a) Monitor soil phosphorus (P) levels and maintain them at agronomic optimum as set out in Fertiliser Use Code of Practice - <http://www.fertiliser.org.nz/Site/code-of-practice/>
- b) Where soil P levels are above optimum there will be a managed reduction plan to reach COP optimum levels.
- c) Nitrogen (N) fertiliser is applied to pasture in response to a future feed deficit identified using a feed budgeting tool.
- d) Nitrogen fertiliser application rates to pasture are no greater than 30 units of N per dressing.
- e) Nitrogen fertiliser is applied to crops in accordance with recommendations of the relevant industry crop model.
- f) Nitrogen fertiliser is not applied when soil temperature (as provided by either soil temperature monitoring or by reference to a catchment specific daily soil temp site) is below 10 degrees.
- g) Fertiliser is stored on a sealed surface and covered or roofed with impermeable material. The storage area will be walled or bunded so no contaminated runoff from the storage site occurs.
- h) Equipment for spreading fertiliser is calibrated at least annually and a record kept of that calibration process.

### **2. Farming in accordance with the nitrogen management requirements**

- a) Where the N leaching rate is greater than the 75th%ile for the relevant FMU, action must be taken to decrease nitrogen leaching rate below the 75th%ile. This action must ensure the property has reduced nitrogen leaching to at least the required level, and is to be implemented within 3 years of the relevant FEP provision date. This must be demonstrated by the inclusion in the FEP of an Overseer modelled scenario of projected

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future nitrogen leaching rate under revised management practices and a commitment to adopt those revised practices.

- b) Where the applicable NRP is less than or equal to the relevant 75th%ile N leaching rate, efficiency opportunities will be identified and described with associated actions
- c) A Nitrogen Risk Scorecard (NRS) assessment of risk (sector specific) is be carried out as part of the FEP development process. An annual NRS report is generated and demonstrates that N loss risk ratings have not increased over the previous year.
- d) Where purchased N surplus is greater than 150kg N/ha/yr practice change is made to decrease purchased N surplus such that the 150kg N/ha/yr threshold is not exceeded.

*Note: 'purchased N surplus' is calculated as the difference between the N brought onto a farm in fertiliser and imported animal feed less the amount of N exported from the farm in product. It is can be calculated using the on-line calculator located on the Waikato Regional Council website or, alternatively, it is an automated output of the Nitrogen Risk Scorecard.*

### **3. Waterways management**

- a) Stock are excluded from waterways in conformance with Schedule C
- b) Where Schedule C does not require exclusion, effective temporary exclusion with a minimum 1.5m setback is be achieved when:
  - i. stock are being intensively grazed using break or block feeding with electric fencing in any paddock with a Schedule C waterway; or
  - ii. The paddock stocking rate is greater than 30SU/ha.
- c) Critical source areas for nitrogen, phosphorus, sediment and pathogens that are close to, or closely linked with a Schedule C waterway are prioritised for action.
- d) Any new or replacement stock exclusion fencing of a Schedule C waterway has an average setback from the waterway bank of 3m with no point having less than a 1.5m setback.

### **4. Land and soil**

- a) All land of class 6e, 7 or 8 (as determined using the Land Use Capability (LUC) Survey Handbook) is identified on the farm maps.

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- b) No cattle older than 2 years or greater than 400kg lwt are grazed on LUC class 6e, 7 or 8 land from June 1 to September 1.
- c) Farm scale erosion risks (type of erosion occurring / areas of the property at risk / specific location of major erosion sites) are mapped.

*Note: On properties with identified large scale erosion risks an erosion plan must be developed in conjunction with the regional council. The FEP must include an action to develop the erosion plan and, once prepared, include reference to such a plan, however, council supported erosion plans (that may be at more than a single property scale) do not have to be duplicated within the property FEP.*

#### **5. Winter grazing of forage crops**

- a) No cattle older than 2 years or greater than 400kg lwt are grazed on forage crops on LUC class 6e, 7 or 8 land from June 1 to September 1.
- b) No winter grazing of forage crops occurs on LUC Class 6e, 7 or 8 land from June 1 to September 1 where the number of cattle grazed exceeds 30 in a single mob
- c) No winter grazing of fodder crops (from June 1 to September 1) occurs within 3m of any Schedule C water body. An ungrazed, vegetated buffer of at least 3m is provided between a winter grazed block and any Schedule C water body.
- d) Break feeding is managed so animals are grazed toward a water body. Ephemeral waterways that are not permanently fenced that have water in them during grazing are temporarily fenced to exclude stock.

#### **6. Races, laneways, bridges**

- a) Races, laneways, culverts and bridges will be designed (including, in the case of races and laneways, through surface contouring and surface drainage channels) and maintained to prevent ponding and to direct race runoff in to vegetated areas. Direct race runoff to surface water must not occur.

#### **7. Cropping**

- a) No cultivation of LUC class 6e, 7 or 8 land other than minimum tillage or direct drilling.

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- b) On land less than 10 degree slope cultivation setbacks from any Schedule C waterway are 3m minimum.
- c) On land greater than 10 degrees (but not including class 6e and above) cultivation setbacks are 5m minimum.

#### **8. Effluent management**

- a) Effluent storage consistent with Dairy Effluent Storage Calculator (DESC) [https://www.dairynz.co.nz/media/3223285/Using\\_the\\_Dairy\\_Effluent\\_Storage\\_Calculator\\_DNZ40\\_114.pdf](https://www.dairynz.co.nz/media/3223285/Using_the_Dairy_Effluent_Storage_Calculator_DNZ40_114.pdf) is in place within 3 years of the date that the FEP is required.
- b) Effluent ponds are managed so as to ensure there is a minimum of 75% working volume available between 1 March and 1 May each year.
- c) The effluent block is sized to ensure nitrogen applications from applied effluent are less than 150kgN /ha/ year.
- d) The effluent system is designed and operated to ensure that the conditions of the permitted activity rule 3.5.5.1 in the regional plan can be met at all times.
- e) Yard areas (drystock and dairy) to be managed to ensure runoff to water does not occur. Where yards are sealed and washed down effluent must be collected into an effluent system and managed as set out in a) to d) above.

#### **9. Irrigation**

- a) Irrigation scheduling – soil moisture tapes, soil moisture probes and/or a soil moisture budget are used to inform irrigation decisions.
- b) A deficit irrigation system is operated. Fixed depth and return irrigation systems must be replaced with a deficit irrigation approach within 3 years of the date that the FEP is required.
- c) An assessment of the irrigation system must be undertaken every second year to determine application depths and uniformity. Where test results fall outside of manufacturers' specifications for the system an action must be included to address this within 12 months.

#### **10. Water Takes**

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- a) All farms will have in place all necessary authorisations for water takes. The conditions that apply to the particular takes on the property must be described in the FEP.

#### **11. Record keeping requirements**

- a) Accurate and auditable records of annual farm inputs, outputs and management practices are maintained.
- b) Information described in a above is provided to the Waikato Council on request.

### **PART D – FEP IMPLEMENTATION MONITORING AND REPORTING REQUIREMENTS**

When required as a condition of a resource consent an FEP shall be reviewed by a Certified Farm Environment Planner for consistency with the FEP approved as part of the consent:

- a) Within 12 months of the granting of the consent applications; and
- b) In accordance with the review intervals out in the conditions of that resource consent

The purpose of the review is to provide an expert opinion whether the farming activities on the property are being undertaken in a manner consistent with actions specific in the FEP. This review shall be undertaken in accordance with the review process set out in the Waikato Regional Council's FEP Independent Review manual

The results of the review shall be provided to the Waikato Regional Council within 20 working days of the review date.

**Note:** *The requirement for monitoring and reporting would need to extend to FEPs required as a condition of permitted activities should PC1 provide for farming activities to be permitted without a Certified Industry Scheme. Such requirements are not specified here because the Fonterra proposal only contemplates farming activities being permitted activities when part of certified industry scheme.*

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#### **PART E – AMENDING AN FEP**

Unless otherwise required by the Waikato Regional Council in accordance with any conditions of any resource consent, changes can be made to the FEP, provided:

- a) The amended FEP is certified by a Certified Farm Environment Planner as continuing to comply with the requirements of this schedule
- b) The change to the FEP does not contravene any mandatory requirement of any resource consent held in respect of the property, or any requirement of the Regional Plan that is not already authorised
- c) The change to the FEP is documented as an amended FEP and provided to the regional council as though it were a new FEP in a manner consistent with Part A of this Schedule.