

**Before an Independent Hearings Panel**

**The Proposed Waikato Regional Plan Change 1**

**IN THE MATTER OF** the Resource Management Act 1991 (**RMA**)

**IN THE MATTER OF** the Proposed Waikato Regional Plan Change 1, Block 2 hearings

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**OPENING LEGAL SUBMISSIONS FOR BLOCK 2  
ON BEHALF OF MIRAKA LIMITED**

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## MAY IT PLEASE THE COMMISSIONERS

### 1. INTRODUCTION

- 1.1 Miraka Limited (**Miraka**) is a Māori-owned dairy processing and exporting company, largely located in the Upper Waikato catchment.<sup>1</sup> Miraka's unique perspective on Plan Change 1 is that it is a commercially successful dairy enterprise whose principles are based on the cultural values of its Māori owners.
- 1.2 Miraka filed corporate and expert evidence and presented legal submissions in Block 1. In summary, Miraka's overall position is that it supports the aims and aspirations of PC1, including the 80 year timeframe to achieve the objectives and the staging of implementation during the first ten years. It seeks that PC1 is implemented in a fair and equitable manner, to ensure that all sectors of the farming and wider community contribute to improving water quality and that the socio-economic impacts of those contributions are minimised where possible.<sup>2</sup>
- 1.3 In relation to the Block 2 topics, Miraka is particularly interested in:
- (a) The approach of PC1 to manage diffuse discharges including the use of the 75<sup>th</sup> percentile and the prioritisation of catchments or industries;
  - (b) Good Farming Practice (**GFP**) and Farm Environment Plans (**FEP**) and
  - (c) Certified Industry Schemes (**CIS**) including the activity status for farming under a CIS.

### Evidence

- 1.4 For this Block 2 hearing, Miraka has provided the following evidence in support of its submissions:
- (a) Dr Mark Shepherd, Principal Scientist with AgResearch. Dr Shephard provides expert evidence on the science of how Nitrogen moves through the pastoral system, how Overseer models the source, transfer and transport of Nitrogen and on-farm mitigation measures and good practices that will reduce Nitrogen leaching;
  - (b) Dr Gavin Sheath, Agricultural Systems Consultant and advisor to Miraka. Dr Sheath draws on the principles and practices of Nitrogen management

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<sup>1</sup> Evidence of Richard Wyeth for Block 1, paragraph 5.2.

<sup>2</sup> Evidence of Richard Wyeth for Block 1, paragraph 6.1 and 6.4, and Evidence of Grant Jackson, paragraph 4.2.

provided by Dr Shepherd and outlines the inadequacies of PC1 as it relates to Nitrogen and offers alternative approaches;

- (c) Grant Jackson, General Manager, Milk Supply for Miraka. Mr Jackson describes the reasons for Miraka's support of FEPs and CISs and examples of their effectiveness to achieve practice change within the Te Ara Miraka programme; and
- (d) Elizabeth Kim Hardy; Planner. Ms Hardy provides a planning analysis of the proposed amendments to the policies and rules to implement Miraka's requested amendments to PC1. Her evidence contains a track change version of relevant parts of the PC1.

### **Outline of these submissions**

1.5 The balance of these submissions will address the following matters:

- (a) Diffuse discharge management - Approaches and methods to reduce contaminant discharges;
- (b) Certified Industry schemes including permitted activity status of farming under a CIS, including:
  - (i) Section 70 Resource Management Act 1991 (**RMA**);
  - (ii) Delegation of powers (section 34 RMA);
  - (iii) Certainty; and
  - (iv) Appropriateness;
- (c) Activity status for medium intensity farming; and
- (d) Topics to be addressed in Block 3.

1.6 There has been some dispute in the evidence and legal submissions about the legality and appropriateness of combined discharge and land use rules. Miraka has no firm position on this particular issue and does not address it further in these submissions.<sup>3</sup>

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<sup>3</sup> The amended provisions attached to the primary evidence of Ms Hardy has for simplicity followed the approach in the section 42A report.

## 2. MANAGING DIFFUSE DISCHARGES

2.1 Miraka's preferred approach to improving water quality and reducing the discharge of contaminants can be summarised as follows:

- (a) All farmers should be required to adopt GFP. The implementation of GFP is within the control of all farmers and does not rely on the bio-physical conditions of a farm. Dr Shepherd outlines a number of measures related to Nitrogen that could be part of GFP. Miraka therefore supports the amendments outlined in the section 42A report which require all farmers to do so;
- (b) All medium and high intensity farms should prepare and implement an FEP<sup>4</sup>. The FEP should contain mitigations and measures that are based on the principles of GFP but tailored to each farm. Miraka therefore supports the amendments outlined in the section 42A report which require most farmers to do this;
- (c) Ideally, all farmers would develop and implement an FEP as soon as possible, without any prioritisation for certain catchments or industries;<sup>5</sup>
- (d) Like DairyNZ and Fonterra, Miraka opposes identifying the dairy industry for special treatment and early prioritisation. That is not equitable and would be contrary to the community-based approach and practice change that Miraka proposes.<sup>6</sup>
- (e) Miraka acknowledges that requiring the majority of farms to develop FEPs within a short period of time may be challenging for the industry (given the pool of potential Certified Farm Environment planners) and for Waikato Regional Council.<sup>7</sup> The inclusion of CISs, with an associated permitted activity status for farming under a CIS within PC1, will greatly reduce this regulatory burden. (CISs are discussed in more detail below.)
- (f) FEPs should require farmers to implement GFP for all four contaminants. In this way all four contaminants would be treated in a similar way under PC1. The details of FEPs will be discussed in Block 3 but at this stage Miraka

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<sup>4</sup> Some low intensity farming may not require an FEP.

<sup>5</sup> This outcome can be achieved by amending the interim permitted activity rule 3.11.15.1A as outlined in the evidence of Ms Hardy.

<sup>6</sup> Evidence of Grant Jackson, at 4.6.

<sup>7</sup> The evidence of Mr James Sinclair on behalf of the Regional Council, paragraph 11, indicates that around 5,700 farms in the Waikato may need resource consent.

considers it is the actions within an FEP that should be enforced rather than the outcomes.

- (g) Miraka opposes the adoption of the Nitrogen Reference Point (**NRP**) and the 75<sup>th</sup> percentile approach for the reasons outlined in the evidence of Dr Shepherd and Dr Sheath. In summary, the NRP and the 75<sup>th</sup> percentile are based on outputs from Overseer which reflect both farm management practices and the bio-physical conditions of each farm.
- (h) Miraka's suppliers are largely located in the Upper Waikato where rainfall is high and variable, and soils are free draining. This means they are therefore disadvantaged compared to other farms within the FMU with different soil types and rainfall.<sup>8</sup> Miraka's suppliers could adopt the same management practices as other farmers but have much higher Overseer leach estimates. This means Miraka's farmers would need to adopt more significant changes in order to meet the 75<sup>th</sup> percentile due solely to the bio-physical condition of their farms.
- (i) Miraka acknowledges that some farms will need to make changes (sometimes significant land use change) in the future but considers that those changes should be part of Stage 2 of Healthy Rivers in order to allow farmers to prepare for the change.
- (j) The unfairness to certain farmers is exacerbated by the large size of the FMUs (on which the 75<sup>th</sup> percentiles will be based). The large size of some FMUs results in a range of farms with different bio-physical conditions being compared. Miraka's requested amendments to the scale of FMU/sub-catchments, outlined in Block 1, would reduce but not eliminate this unfairness.
- (k) In addition, there are well documented concerns about using Overseer as a regulatory tool.<sup>9</sup> While these are acknowledged in one part of the section 42A report, the report writer nevertheless recommends that the Overseer based provisions (including the 75<sup>th</sup> percentile approach) be retained. This approach is disappointing and internally inconsistent. The Council appears to be retaining Overseer-based provisions because of perceived ease of application rather than seeking solutions that would better implement PC1's objectives.

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<sup>8</sup> Miraka estimates that up to 25% of its farmers will exceed the 75<sup>th</sup> percentile for the current Upper Waikato FMU and so need to reduce their nitrogen leech.

<sup>9</sup> Section 42A report at C1.1.8.4. and Evidence of Dr Gavin Sheath at 4.5-4.6.

- (l) Given the potential reductions in Nitrogen loss from implementing GFP that Dr Shepherd outlines and the adoption constraints that farmers will face, Miraka expects that implementing GFP will achieve at least a 10 % reduction in nitrogen loss. This is the estimate that Doole et al used in his initial modelling for CSG<sup>10</sup> and aligns with the target set for Stage 1 of PC1;
- (m) Miraka opposes the NRP and 75<sup>th</sup> percentile based on Overseer estimates. However, it acknowledges that there is merit in having a mechanism to determine baselines and monitor progress. It proposes an alternative mechanism based on Nitrogen Surplus, not Nitrogen Leach. This is explained in the evidence of Dr Sheath and Ms Hardy and included in the track change version of PC1.
- (n) If the Panel considers that adopting GFP alone will not led to sufficient reductions in contaminant discharges, Dr Sheath's evidence outlines additional measures that could be imposed used to reduce Nitrogen surplus<sup>11</sup>. There is also scope of sub-catchment wide reductions which will be discussed in more detail in Block 3 regarding sub-catchment planning.

### **3. CERTIFIED INDUSTRY SCHEMES AND PERMITTED ACTIVITY STATUS**

- 3.1 Miraka supports a permitted activity status for farming undertaken under a CIS. If those provisions are included in PC1 Miraka intends to register Te Ara Miraka as a CIS and for its suppliers to operate under the CIS. If PC1 contains different provisions (i.e. if the activity status changes to restricted discretionary) the costs of registering as a CIS may outweigh the benefits. Miraka would still use Te Ara Miraka to incentivise improvements in its suppliers but may not do so within a CIS framework.
- 3.2 CISs are addressed in some detail in the section 42A Report.<sup>12</sup> The Report summarises the themes from the submissions including concerns about the legal basis of the notified rule. Those concerns seem to relate to section 70, delegation of powers and certainty of the rule (addressed further below).
- 3.3 The relevant legal principles for the certainty of a permitted activity were outlined in the opening legal submissions for Waikato Regional Council and are supported by Miraka. The amendments to the provisions outlined in the evidence of Ms Hardy would assist to provide the necessary certainty.

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<sup>10</sup> Evidence of Dr Gavin Sheath at 5.4.

<sup>11</sup> These may include Best Practice mitigations, such as land use change and cross-farm mitigations in those catchments that require.

<sup>12</sup> Section C3, page 126.

3.4 In addition, Miraka has reviewed the amendments to Rule 3.11.5.3 as proposed by Mr Willis on behalf of Fonterra<sup>13</sup> and considers that there is significant merit to the inclusion of clear standards requiring the permitted activity to not exceed the existing discharges for the property. A revised set of track changes is attached as Appendix 1 to these submissions.

### **Section 70 of the RMA**

3.5 Section 70 is not addressed in the legal submissions for the Regional Council. However, it is addressed in some detail by the legal submissions and evidence for Fonterra.

3.6 Section 70(1) requires that before a regional council includes a permitted activity rule in its plan about discharges it must be satisfied that none of the effects in clauses (c) – (g) are likely to arise. Of most relevance to PC1, clause (g) refers to “any significant adverse effects on aquatic life”.

3.7 Mr McCallum-Clark<sup>14</sup> and various parties (including Fish & Game<sup>15</sup>) allege that farming undertaken under a CIS as a permitted activity would fail the requirements of the section 70 test, on the basis that the Regional Council cannot be satisfied there are no significant adverse effects on aquatic life (section 70(1)(g)). In particular, they cite a risk of cumulative effects on aquatic life from permitted discharges, given the existing significant effect on aquatic life (as shown by the failure of existing water quality in parts of the catchment to meet the ecological values in PC1). The section 42A report also notes a concern about whether the rule will implement the requirement in the Vision and Strategy to avoid adverse cumulative effects<sup>16</sup>.

3.8 Miraka has not provided any ecological evidence in relation to PC1 and it appears no other party has provided ecological evidence directly on point.<sup>17</sup> In Miraka's view, the Panel should not base its decision on this point solely on the statement of planners or the submissions of parties with a clear interest in opposing CIS. The Panel has requested further information from the Regional Council and Mr McCallum-Clark on the issue as part of its further questions and this may assist.<sup>18</sup>

3.9 In addition, if the approach adopted by opponents of the CIS mechanism is taken to its logical conclusion there could be no permitted activities at all within PC1 as there

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<sup>13</sup> See track changes version of PC1 attached to Mr Willis primary evidence for Block, page 53.

<sup>14</sup> As outlined in Mr McCallum-Clark's presentation of his Block 2 evidence.

<sup>15</sup> Primary evidence of Ms Hellen Marr, paragraphs 6.33-6.35.

<sup>16</sup> Paragraphs 803 and 804.

<sup>17</sup> The evidence of Ms Marr for Auckland / Waikato & Eastern Region Fish and Game Councils states at para 6.34 that evidence has been provided in this hearing but gives no reference. The evidence of Mr Canning for Fish and Game addresses ecological issues generally but largely in the context of new attributes and limits.

<sup>18</sup> See Minute of the panel dated 7 June 2019.

could be a risk that any discharge could contribute to the existing cumulative adverse effect. That would require all farming in the catchment to obtain a resource consent and would seem to be a highly inefficient outcome.

- 3.10 Miraka considers that the intent of section 70 is that a rule should not cause certain effects “*to arise*”. That implies the creation of a new effect rather than the management and reduction of existing cumulative effects across a whole catchment. Section 70 also seems to relate to more directly to point source discharges.<sup>19</sup> Accordingly, section 70 does not seem to be well designed to address the particular resource management issues of PC1.
- 3.11 Assuming there is a significant adverse effect on aquatic life from existing and historic discharges then it is an *existing* effect. It is therefore part of the existing environment in a real world sense, or in simpler terms it exists in the current environment. This reality has to be taken into account when devising the planning rules for PC1 and applying section 70 of the Act.
- 3.12 Miraka considers that the amended permitted activity rule, with the changes it now proposes, will at least maintain existing water quality and should cumulatively *reduce* discharges and so *reduce* cumulative effects on aquatic life. If the existing water quality is taken as a baseline then the proposed rule will not result in any new adverse effects.
- 3.13 Such an outcome will meet the intent of section 70 and will ensure farming under a CIS contributes to achieving the water quality targets in the Plan and achieving the Vision and Strategy.

### **Delegation of powers**

- 3.14 A number of parties opposed the concept of CIS in its entirety on the basis that the delegation to a CIS of the Waikato Regional Council's functions (including in relation to monitoring and enforcement) is unlawful. The section 42A report acknowledges the issue<sup>20</sup> but offers no assessment on the issue and it was not addressed in the opening legal submissions for the Regional Council. It is therefore unclear what the Council's position is on this matter.
- 3.15 Sections 34 and 34A of the RMA outline when a local authority may delegate its functions, powers and duties. The relevant sections are quoted in full in Appendix 2 to these submissions. The persons who can receive delegated powers are relatively

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<sup>19</sup> This is discussed in the submissions of Mr Matheson on behalf of Fonterra in Blocks 1 and 2.

<sup>20</sup> See for example paragraphs 793 and 800.

narrow, including hearing commissioners with the power to decide consent applications. There are some clear limits about how the delegations must occur.<sup>21</sup>

- 3.16 Miraka considers that the CIS provisions as currently drafted do not effect a delegation of powers or functions from the Regional Council to a CIS. All the powers of monitoring and enforcement remain with the Regional Council. It will have full power to undertake any of these tasks and there is no indication that a CIS is able to prevent these powers from being exercised or to override them or that the Regional Council has expressly or impliedly relinquished those roles.
- 3.17 The collection and collation of information and the provision of that information to Council will give the Council more timely information than it is likely to receive from individual farmers. A CIS will assist both farmers to meet their obligations and assist the Council to perform its functions. This is especially the case given the large number of other consents the Regional Council will need to process and monitor under PC1.

#### **Most appropriate provision**

- 3.18 As outlined in the evidence of Mr Jackson and Ms Hardy there seems to be a clear benefit to the Regional Council and the farming community through the use of CISs. In Miraka's view, the reduction in the regulatory burden on the Council from the CIS scheme is a significant factor in demonstrating that it is part of a package which is the appropriate means to implement the objectives.
- 3.19 The Vision and Strategy objectives cannot be achieved within the first 10 years and the CIS scheme allows a large section of the farming community to start the improvement process sooner, more cost effectively and more efficiently than the alternative of requiring most farmers to obtain resource consent.

#### **4. ACTIVITY STATUS FOR ONGOING FARMING**

- 4.1 In the event that the Panel determined that the permitted activity rule for farming under a CIS did not meet the requirements of section 70, Miraka considers that it should be a controlled activity rather than restricted discretionary. Miraka also considers that medium intensity farming not undertaken under a CIS should be a controlled activity, as it was in the notified version of PC1, and not a restricted discretionary activity.

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<sup>21</sup> The legal submissions for Fish & Game submitted that if there is a delegation, there is a clear need for independence, such that the delegation can be revoked at any time and cited *Just One Life v Queenstown Lakes District Council* (2003) 9 ELRNZ 222. This principle is included within the wording of section 34A and so adds little to the discussion.

- 4.2 The evidence of Mr Sinclair for the Regional Council has outlined the significant cost saving and efficiencies of a controlled activity rather than restricted discretionary.<sup>22</sup> Controlled activity gives more certainty to existing farmers and signals that existing farming is an appropriate activity within the Waikato Region.
- 4.3 The section 42A report, Mr McCallum-Clark and various other parties<sup>23</sup> express concern that under a controlled activity rule the Regional Council would be unable to impose conditions to require a farmer to reduce their discharge of contaminants because such conditions would 'frustrate' the resource consent. Mr McCallum-Clark expressed concern that the Regional Council could not impose conditions to stop increases in discharges and so not even "hold the line".
- 4.4 Miraka considers these concerns can easily be met and that a controlled activity status is appropriate.
- 4.5 The leading case on whether conditions of consent would frustrate a resource consent is *Director-General of Conservation v Marlborough District Council*.<sup>24</sup> The High Court held that a condition was valid even though the consent could not commence if part of the condition was not satisfied - if a condition has two possible outcomes and one of these enables the activities authorised by the consent, the condition does not frustrate the consent.<sup>25</sup>
- 4.6 The High Court in *Director-General of Conservation* quoted with approval the Environment Court in *Lyttelton Port Company v Canterbury Regional Council* where it stated: "A Court cannot impose a condition that would nullify the grant the consent".
- 4.7 In light of those legal principles there is in fact a wide ambit of conditions that a consent authority could impose before such conditions would frustrate or nullify the grant of consent. "Frustrate" effectively amounts to stopping the operation or activity.
- 4.8 Accordingly, if medium intensity farming was a controlled activity, the Regional Council would still be able to impose conditions to require reduction in contaminants or at least not increase contaminants, without any danger of frustrating the consent.
- 4.9 In particular, Miraka supports introducing standards for the controlled activity, such that the rule applies to farms that are not seeking to increase discharge of

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<sup>22</sup> Insert reference.

<sup>23</sup> Section 42A Report at 293, and primary evidence of Ms Kessick for the Director-General of Conservation, paragraph 134 - 138. .

<sup>24</sup> *Director-General of Conservation v Marlborough District Council* CIV 2003-485-2228, 3 May 2004. The case concerned an appeal to the High Court in relation to the imposition of conditions on a new marine farm in Marlborough.

<sup>25</sup> *Ibid* at [22]-[24].

contaminants. This would ensure that the Regional Council has the ability to decline any farming activity that seeks to increase its discharges.

## **5. LATER HEARING BLOCKS**

5.1 Miraka is interested in all of PC1 but is particularly concerned about some matters that will arise in Hearing Block 3 including details of FEPs, future allocation and sub-catchment management approaches. These matters are not discussed in the Section 42A report for Block 2 but certain submitters<sup>26</sup> have provided evidence and legal submissions on these matters already. Miraka will comprehensively address these issues in its evidence and legal submissions for Block 3.

## **6. CONCLUSION**

- 6.1 Miraka generally supports PC1 as it aligns with the company's values and aspirations. In relation to Block 2, it supports farms adopting GFP and developing and implementing FEPs. It opposes the 75<sup>th</sup> percentile approach to the management of diffuse nitrogen discharges and considers that GFP should be the primary mechanism to reduce all four contaminants. It supports CISs and consider that these will greatly assist with the efficient and effective implementation of PC1.
- 6.2 The updated track changes to PC1 to implement Miraka's position are set out in Appendix 2 to these legal submissions.

**DATED** this 13<sup>th</sup> day of June 2019



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**J Caldwell / M Gribben**  
Counsel for Miraka Limited

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<sup>26</sup> Most notably Beef & Lamb and Department of Conservation.

## APPENDIX 1

Miraka proposed changes in primary evidence of Kim Hardy in **yellow shading**  
Additional changes in legal submissions on behalf of Miraka in **green shading**

### 3.11.3 Policies/Ngā Kaupapa Here

#### **Policy 1: ~~Manage d~~ Diffuse discharge ~~management s~~ of nitrogen, phosphorus, sediment and microbial pathogens/Te Kaupapa Here 1: Te whakahaere i ngā rukenga roha o te hauota, o te pūtūtae-whetū, o te waiparapara me te tukumate ora poto**

~~Reduce Manage and require reductions in<sup>29</sup> catchment-wide and<sup>30</sup> sub-catchment-wide diffuse<sup>31</sup> discharges of nitrogen, phosphorus, sediment and microbial pathogens, by:~~

- ~~a1. Requiring all farming activities to operate at Good Farming Practice, or better; and<sup>32</sup>~~
- ~~a2. Establishing, where possible, a Nitrogen Reference Point for nitrogen surplus for all properties or enterprises; and<sup>33</sup>~~
- ~~a3. Measuring and monitoring reduction actions and changes to the Nitrogen Reference Points for nitrogen surplus, for all properties.~~
- a. Enabling activities with a low level of contaminant discharge to water bodies ~~provided those discharges do not increase<sup>34</sup>; and~~
- b. Requiring farming activities with moderate to high levels of contaminant discharge **to water bodies relative to Good Farming Practice** to reduce their discharges **proportionate to the amount of (2016) discharge and the water quality improvements required in the sub-catchment<sup>35</sup>; and**
- ~~b1. Calculating the 75<sup>th</sup> percentile and 50<sup>th</sup> percentile nitrogen leaching values and requiring farmers with a Nitrogen Reference Point greater than the 75<sup>th</sup> percentile to reduce nitrogen loss to below the 75<sup>th</sup> percentile and farmers with a Nitrogen Reference Point between the 50<sup>th</sup> and 75<sup>th</sup> percentile to demonstrate real and enduring reductions of nitrogen leaching, with resource consents specifying an amount of reduction or changes to practices required to take place; and~~
- b1.1 Promoting Good Farming Practice to reduce the discharge of all four contaminants.**
- ~~b2. Where Good Farming Practices are not adopted, to specify controls in a resource consent that ensures contaminant losses will be reducing<sup>37</sup>.~~
- ~~b3. Except as provided for in Policies [1(a) and] 16, generally granting only those land use and discharge consent applications that demonstrate clear and enduring reductions in diffuse discharges of nitrogen, phosphorus, sediment and microbial pathogens; and<sup>38</sup>~~
- ~~b4. Except as provided for in Policies [1(a) and] Policy 16, generally not granting land use consent applications that involve a change in the use of the land, or an increase in the intensity of the use of land, unless the application demonstrates clear reductions in diffuse discharges of nitrogen, phosphorus, sediment and microbial pathogens; and<sup>39</sup>~~
- c. Progressively excluding cattle, horses, deer and pigs from rivers, streams, drains, wetlands and lakes.

#### **Policy 2: ~~Farm Environment Plans Tailored approach to reducing diffuse discharges from farming activities/Te Kaupapa Here 2: He huarahi ka āta whakahāngaihia hei whakaiti i ngā rukenga roha i ngā mahinga pāmu~~**

~~Reduce Manage and require reductions in<sup>40</sup> catchment-wide and<sup>41</sup> sub-catchment-wide<sup>42</sup> diffuse discharges of nitrogen, phosphorus, sediment and microbial pathogens from farming activities on properties and enterprises, through Farm Environment Plans<sup>43</sup> that:~~

- ~~a1. Set out clear, specific and timeframed minimum standards for Good Farming Practice; and<sup>44</sup>~~
- ~~a. Take Taking a tailored, risk based approach to define mitigation actions on the land that will reduce diffuse discharges of nitrogen, phosphorus, sediment and microbial pathogens, with the mitigation actions to be specified in a Farm Environment Plan either associated with a resource consent, or in specific requirements established by participation in a Certified Industry Scheme<sup>45</sup>; and~~
- ~~b. Undergo Requiring the same level of rigour in developing, monitoring and auditing of mitigation actions on the land that is set out in a Farm Environment Plan, whether the consent holder is a member of a Certified Sector Scheme or not it is established with a resource consent or through Certified Industry Schemes<sup>46</sup>; and~~
- ~~b2. Are flexible and able to be updated so that continuous improvement, new technologies and mitigation practices can be adopted, such that diffuse discharges of nitrogen, phosphorus, sediment and microbial pathogens further reduce over time.<sup>47</sup>~~
- ~~c. Establishing a Nitrogen Reference Point for the property or enterprise; and<sup>48</sup>~~
- ~~d. Requiring the degree of reduction in diffuse discharges of nitrogen, phosphorus, sediment and microbial pathogens to be 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 sub-catchment; and<sup>49</sup>~~

- 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.<sup>50</sup>

### **Policy 3A: Certified Sector Schemes**

Waikato Regional Council will support the development of Certified Sector Schemes as groups or organisations responsible for preparing and monitoring the implementation of Farm Environment Plans by:

- a. Setting out minimum standards for Certified Sector Schemes in Schedule 2; and
- b. Establishing a process for approving Certified Sector Schemes based on their ability to meet the minimum standards, including entering into a contractual agreement with each Certified Sector Scheme to meet and maintain those standards; and
- c. Requiring independent audit of the performance of Certified Sector Schemes in preparing and monitoring the implementation of Farm Environment Plans for their members. **The independent auditor must be qualified in xxx and approved as a Waikato Regional Council Sector Scheme Auditor by the Chief Executive of Waikato Regional Council.**
- d. Requiring regular reporting by Certified Sector Schemes to the Waikato Regional Council
- e. **Allowing certification to be revoked in the event of continual and repeated failure to meet its obligations**

### **Policy 4: Future discharge reductions ~~Enabling activities with lower discharges to continue or to be established while signalling further change may be required in future~~/Te Kaupapa Here 4: Te tuku kia haere tonu, kia whakatūria rānei ngā tūmahi he iti iho ngā rukenga, me te tohu ake ākuanei pea me panoni anō hei ngā tau e heke mai ana**

~~Manage sub-catchment wide diffuse discharges of nitrogen, phosphorus, sediment and microbial pathogens, and enable existing and new low discharging activities to continue provided that cumulatively the achievement of Objective 3 is not compromised. Activities and uses currently defined as low dischargers may in the future need to~~ To recognise that future regional plan changes or regional plans are likely to require all farming activities make further reductions in the take mitigation actions that will reduce diffuse discharges of nitrogen, phosphorus, sediment and microbial pathogens in order for Objective 1 to be met.<sup>52</sup>

To grant resource consents that authorise farming activities for a duration that will enable further reductions in contaminant losses to be implemented through replacement resource consents rather than by way of a review of consent conditions; unless the application demonstrates clear and enduring ongoing reductions of contaminant losses beyond those imposed in response to the short-term water quality attribute states in Table 3.11-1 and the property is not in a Priority 1 sub-catchment.<sup>53</sup>

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

To recognise that:

- a. All farmers, businesses and communities<sup>54</sup> will need to contribute to achieving the water quality attribute states<sup>55</sup> in Table 3.11-1; and
- b. Changes in practices and activities need to start immediately<sup>56</sup>; and
- c. The rate of change will need to be staged over the coming decades to minimise social, economic<sup>57</sup> and cultural disruption and enable innovation and new practices to develop; and
- d. Responding to the reasonably foreseeable effects of climate change will mean that different regulatory and non-regulatory responses may be needed in future.<sup>58</sup>

~~Recognise that achieving the water quality attribute targets set out in Table 11-1 will need to be staged over 80 years, to minimise social disruption and~~ **allow for enable** innovation and new practices to develop, while making a start on reducing discharges of nitrogen, phosphorus, sediment and microbial pathogens, and preparing for further reductions that will be required in subsequent regional plans.

### **Policy 6: Restricting land use change/Te Kaupapa Here 6: Te here i te panonitanga ā-whakamahinga whenua**

~~Except as provided for in Policy 16, land use change consent applications that demonstrate an increase in the diffuse discharge of nitrogen, phosphorus, sediment or microbial pathogens will generally not be granted.~~

~~Land use change consent applications that demonstrate clear and enduring decreases in existing diffuse discharges of nitrogen, phosphorus, sediment or microbial pathogens will generally be granted.~~<sup>59</sup>

### **Policy 8: Prioritised implementation/Te Kaupapa Here 8: Te raupapa o te whakatinanatanga**

Prioritise the management of diffuse discharges of nitrogen, phosphorus, sediment and microbial pathogens ~~land and water resources by implementing Policies 2, 3 and 9, and~~<sup>61</sup> in accordance with the prioritisation of areas set out in Table 3.11-2, commercial vegetable production activities<sup>62</sup> ~~[OPTION and dairy farming<sup>63</sup>].~~ The catchments of lakes.<sup>64</sup> ~~Priority areas include:~~ **and through the requirements in FEPS**

- a. Sub-catchments where there is a greater gap between the water quality targets<sup>65</sup> in Objective 1 (Table 3.11-1) and current water quality; and

- ~~b. Lakes Freshwater Management Units<sup>A</sup>; and~~
- ~~c. Whangamarino Wetland;~~

In addition to the priority sub-catchments listed in Table 3.11-2, the 75th percentile nitrogen leaching value dischargers will also be prioritised for Farm Environment Plans.<sup>65</sup>

### 3.11.5 Rules/Ngā Ture

#### ~~3.11.5.1 Permitted Activity Rule – Small and Low Intensity farming activities/Te Ture mō ngā Mahi e Whakaaetia ana – Ngā mahi iti, ngā mahi pāiti hoki i runga pāmu~~

##### ~~Rule 3.11.5.1 Permitted Activity Rule – Small and Low Intensity farming activities~~

~~The use of land for farming activities (excluding commercial vegetable production) 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 permitted activity subject to the following conditions:~~

- ~~1. The property is registered with the Waikato Regional Council in conformance with Schedule A; and~~
  - ~~2. Cattle, horses, deer and pigs are excluded from water bodies in conformance with Schedule C; and~~
- ~~Either:~~
- ~~3. The property area is less than or equal to 4.1 hectares; and~~
  - ~~4. The farming activities do not form part of an enterprise being undertaken on more than one property; or~~
- ~~The property area Where the property area is greater than 4.1 hectares:~~
- ~~5. For grazed land, the stocking rate of the land is less than 6 stock units per hectare; and~~
  - ~~6. No arable cropping occurs; and~~
  - ~~7. The farming activities do not form part of an enterprise being undertaken on more than one property.<sup>82,83</sup>~~

#### 3.11.5.1A Interim Permitted Activity Rule – Farming

##### Rule 3.11.5.1A – Interim Permitted Activity Rule – Farming

The use of land for farming, which is not a permitted activity under Rule 3.11.5.2, is a permitted activity until:

1. The later of 1 September 2021 or 6 months after this Plan becomes operative, for **all** properties
- 2.

subject to the following conditions:

1. The property is registered with the Council in conformance with Schedule A; and
2. Cattle, horses, deer and pigs are excluded from water bodies in conformance with Schedule C; and
3. No commercial vegetable production occurs; and
4. A Nitrogen Reference Point **for nitrogen surplus** is produced for the property in conformance with Schedule B; and
- 4A. The Nitrogen Reference Point for Nitrogen Surplus for the property does exceed the level of nitrogen surplus submitted to the Waikato Regional Council in accordance with condition 4**
5. 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<sup>65</sup>
6. 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:
  1. Woody vegetation to farming activities; or
  2. Any farming activity other than dairy farming to dairy farming; or
  3. Any farming activity to Commercial Vegetable Production<sup>86</sup>

#### 3.11.5.2 Permitted Activity Rule – ~~Other~~ Low intensity farming activities/Te Ture mō ngā Mahi e Whakaaetia ana – Ētehi atu mahi i runga pāmu

##### Rule 3.11.5.2 - Permitted Activity Rule – ~~Other~~ Low intensity farming activities

The use of land for farming activities (excluding commercial vegetable production) 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 where the property area is greater than 4.1 hectares, and has more than 6 stock units per hectare or is used for arable cropping,<sup>87</sup> is a permitted activity subject to the following conditions:

A. For all properties:

1. The property is registered with the Waikato Regional Council in conformance with Schedule A; and
2. Cattle, horses, deer and pigs are excluded from water bodies in conformance with Schedule C ~~and Conditions 3(e) and 4(e) of this Rule~~; and
- 2A. The farming activities do not form part of an enterprise; and
- 2B. No commercial vegetable production occurs; and
- 2C. No dairy farming or grazing of dairy cattle occurs; and
- 2D. No feedlots or sacrifice paddocks are used on the property; and
- 2E. No more than 5% of the land used for farming is used for cropping, including winter forage crops; and<sup>88</sup>

B3. ~~Where~~ The property area is less than or equal to 20 hectares; or:

- a. The farming activities do not form part of an enterprise being undertaken on more than one property; and
- b. Where the land is:
  - i. used for grazing livestock, the stocking rate of the land is no greater than the stocking rate of the land at 22 October 2016; or

- ii. ~~not used for grazing livestock, the land use has the same or lower diffuse discharges of nitrogen, phosphorus, sediment or microbial pathogens as the land use at 22 October 2016; and~~
  - e. ~~Upon request, the landowner shall obtain and provide to the Council independent verification from a Certified Farm Environment Planner that the use of land is compliant with either (b)(i) or (b)(ii) above; and~~
  - d. ~~Upon request from the Council, a description of the current land use activities shall be provided to the Council; and~~
  - e. ~~Where the property or enterprise contains any of the water bodies listed in Schedule C, new fences installed after 22 October 2016 must be located to ensure cattle, horses, deer and pigs cannot be within three metres of the bed of the water body (excluding constructed wetlands and drains).<sup>89</sup>~~
- C4. Where the property or enterprise area is greater than 20 hectares, and either:
1. The stocking rate of the land is less than 6 stock units per hectare; or
  2. The only farming activity occurring on the property is the raising, training or housing of horses; or<sup>90</sup>
  3. The stocking rate of the land is greater than 6 stock units but less than 10 stock units per hectare; and<sup>91</sup>
    - a. A Nitrogen Reference Point **for nitrogen surplus** is produced for the property or enterprise in conformance with Schedule B;
- a1. The Nitrogen Reference Point for Nitrogen Surplus for the property does exceed the level of nitrogen surplus submitted to the Waikato Regional Council in accordance with condition 4**
- and
- b. ~~The diffuse discharge of nitrogen from the property or enterprise does not exceed either:~~
    - i. ~~the Nitrogen Reference Point; or~~
    - ii. ~~15kg nitrogen/hectare/year;~~whichever is the lesser, over the whole property or enterprise when assessed in accordance with Schedule B; and<sup>92</sup>
  - c. ~~No part of the property or enterprise over 15 degrees slope is cultivated; and~~ or
  - c1. No part of the property over XX degrees of slope is<sup>93</sup> grazed; and
  - d. ~~No winter forage crops are grazed in situ; and~~
  - e. ~~Where the property or enterprise contains any of the water bodies listed in Schedule C:~~
    - i. ~~There shall be no cultivation within 5 metres of the bed of the water body; and~~
    - ii. ~~New fences installed after 22 October 2016 must be located to ensure cattle, horses, deer and pigs cannot be within three metres of the bed of the water body (excluding constructed wetlands and drains); and<sup>94</sup>~~
  - f5. ~~For all properties greater than 4.1 hectares, fFrom 31 March 2019 30 November 2020, in addition to the requirements of Schedule A, the following information is must be provided to the Waikato Regional Council by 1 September each year:~~
    - a. The monthly average Annual stock numbers of each stock class from 1 July to 30 June in the following year; and
    - b. Tonnes and type of Annual fertiliser applied from 1 July to 30 June in the following year use; and
    - c. Tonnes of and type of Annual brought in animal feed brought onto the property in the previous 12 months; and<sup>95</sup>
  - g. 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<sup>96</sup>
  - h. Upon request, the landowner shall obtain and provide to the Council independent verification from a Certified Farm Environment Planner that the use of land is compliant with the conditions of this Rule within 20 working days of the request (unless otherwise agreed in writing by Council).<sup>97</sup>

### **3.11.5.2A Controlled Activity Rule – Medium intensity farming/**

#### **Rule 3.11.5.2A - Controlled Activity Rule – Medium intensity farming**

The use of land for farming, which is not a permitted activity under Rules 3.11.5.1A to 3.11.5.2, 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 **for nitrogen surplus** 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 conformance with Schedule 1 and has been approved by a Certified Farm Environment Planner, and is provided to the Council at the time the resource consent application is lodged; and
8. Either:
  - a. The Nitrogen Reference Point **for nitrogen surplus** is not exceeded; or

- b. The stocking rate of the land is no greater than 18 stock units per hectare and has not increased above the stocking rate during the Reference Period in Schedule B; and
- 6. 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:
  - 1. Woody vegetation to farming activities; or
  - 2. Any farming activity other than dairy farming to dairy farming; or
  - 3. Any farming activity to Commercial Vegetable Production

Waikato Regional Council reserves control over the following matters:

- i. The content, compliance with and auditing of the Farm Environment Plan.
- ii. The actions and timeframes to achieve Good Farming Practices or better in order to reduce the diffuse discharge of nitrogen, phosphorus, sediment or microbial pathogens to water or to land where they may enter water.
- iii. For enterprises, the procedures and limitations, including Nitrogen Reference Points, to be applied to land that enters or leaves the enterprise.
- iv. Where the Nitrogen Reference Point exceeds the 75th percentile nitrogen leaching value, actions, timeframes and other measures to ensure the diffuse discharge of nitrogen is reduced so that it does not exceed the 75th percentile nitrogen leaching value by 1 July 2026.
- v. The term of the resource consent.
- vi. The timeframe and circumstances under which the consent conditions may be reviewed.
- vii. Procedures for reviewing, amending and re-approving the Farm Environment Plan.

### 3.11.5.3 **Permitted Restricted Discretionary** Activity Rule – Farming activities with a Farm Environment Plan under a Certified **Industry Sector** Scheme/Te Ture mō ngā Mahi e Whakaetia ana – Ngā mahi i runga pāmu kua whai Mahere Taiao ā-Pāmu i raro i te Kaupapa ā-Ahumahi kua Whai Tohu

**Rule 3.11.5.3 - Permitted Restricted Discretionary** Activity Rule – Farming activities with a Farm Environment Plan under a Certified **Industry Sector** Scheme

~~Except as provided for in Rule 3.11.5.1 and Rule 3.11.5.2 the use of land for farming activities (excluding commercial vegetable production) where the land use is registered to a Certified Industry Sector Scheme, 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 permitted restricted discretionary activity subject to the following conditions:~~

- 1. ~~The property is registered with the Waikato Regional Council in conformance with Schedule A; and~~
- 2. ~~A Nitrogen Reference Point for nitrogen surplus is produced for the property or enterprise in conformance with Schedule B; and~~
- 2A. The Nitrogen Reference Point for Nitrogen Surplus for the property does exceed the level of nitrogen surplus submitted to the Waikato Regional Council in accordance with condition 2 and
- 3. ~~Cattle, horses, deer and pigs are excluded from water bodies in conformance with Schedule C; and~~
- 4. ~~The Certified Industry Sector Scheme meets the criteria set out in Schedule 2 and has been approved by the Chief Executive Officer of the Waikato Regional Council as meeting the standards set out in Schedule 2 and not revoked by written notice from the Chief Executive; and~~

**4A** The property of enterprise is part of an approved Certified Sector Scheme and is complying with all its necessary obligations and responsibilities under that Certified Sector Scheme; and

- 5. ~~A Farm Environment Plan which has been prepared in accordance with Schedule 1 and has been approved by a Certified Farm Environment Planner, and is provided to the Waikato Regional Council and as follows:~~
  - a. ~~By 1 July 2020 1 March 2022 for properties or enterprises within Priority 1 sub-catchments listed in Table 3.11-2, and all properties or enterprises with a Nitrogen Reference Point greater than the 75th percentile nitrogen leaching value;~~
  - b. ~~By 1 July 2023 1 March 2025 for properties or enterprises within Priority 2 sub-catchments listed in Table 3.11-2;~~
  - c. ~~By 1 July 2026 for properties or enterprises within Priority 3 sub-catchments listed in Table 3.11-2; and~~
- 5a. Full electronic access to Overseer or any other software or system that records farm data and models or records diffuse contaminant losses for the farming land use authorised by this rule is granted to the Waikato Regional Council; and
- 5b. There have 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:
  - 1. Woody vegetation to farming activities; or
  - 2. Any farming activity other than dairy farming to dairy farming; or
  - 3. Any farming activity to Commercial Vegetable Production
- 6. The use of land shall be undertaken in accordance with the actions and timeframes specified in the Farm Environment Plan; and
- 7. The Farm Environment Plan provided under Condition 5 may be amended in accordance with the procedure set out in Schedule 1 and the use of land shall thereafter be undertaken in accordance with the amended plan; and
- 8. A copy of the Farm Environment Plan amended in accordance with condition (7) shall be provided to the Waikato Regional Council within 30 working days of the date of its amendment.

### 3.11.5.4 Controlled Restricted Discretionary Activity Rule – Farming activities with a Farm

#### Environment Plan ~~not under a Certified Industry Scheme~~/Te Ture mō ngā Mahi ka āta

#### Whakahaerehia – Ngā mahi i runga pāmu kua whai Mahere Taiao ā-Pāmu kāore i raro i te Kaupapa ā-Ahumahi kua Whai Tohu

#### Rule 3.11.5.4 – ~~Controlled Restricted Discretionary Activity Rule – Farming activities with a Farm Environment Plan not under a Certified Industry Scheme~~

~~Except as provided for in Rule 3.11.5.1 and Rule 3.11.5.2 the use of land for farming activities (excluding commercial vegetable production) where that land use is not registered to a Certified Industry Scheme, 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, which is not a permitted activity or a controlled activity under Rules 3.11.5.1A- or a to 3.11.5.32, is a Restricted Discretionary permitted<sup>98</sup> activity until:~~

- ~~1. 1 January 2020 1 September 2021~~ for properties or enterprises in Priority 1 sub-catchments listed in Table 3.11-2
- ~~2. 1 January 2023 1 September 2024~~ for properties or enterprises in Priority 2 sub-catchments listed in Table 3.11-2;
- ~~3. 1 January 2026~~ for properties or enterprises in Priority 3 sub-catchments listed in Table 3.11-2;<sup>99</sup>

~~subject to the following conditions:~~

- ~~1. The property is registered with the Waikato Regional Council in conformance with Schedule A; and~~
- ~~2. A Nitrogen Reference Point for nitrogen surplus is produced for the property or enterprise in conformance with Schedule B; and~~
- ~~3. No commercial vegetable production occurs; and~~
- ~~4. A Farm Environment Plan has been prepared in conformance with Schedule 1 and has been approved by a Certified Farm Environment Planner, or prepared under a Certified Sector Scheme, and is provided to the Council at the time the resource consent application is lodged; and<sup>100</sup>~~
- ~~5. Cattle, horses, deer and pigs are excluded from water bodies in accordance with Schedule C; and<sup>101</sup>~~
- ~~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 Waikato Regional Council; and<sup>102</sup>~~

~~After the dates set out in 1), 2) and 3) above the use of land shall be a controlled activity (requiring resource consent), subject to the following standards and terms:~~

- ~~a. A Farm Environment Plan has been prepared in conformance with Schedule 1 and has been approved by a Certified~~

~~Farm Environment Planner, and is provided to the Waikato Regional Council at the time the resource consent application is lodged by the dates specified in I-III below; and~~

- ~~b. The property is registered with the Waikato Regional Council in conformance with Schedule A; and~~
- ~~c. A Nitrogen Reference Point is produced for the property or enterprise in conformance with Schedule B and is provided~~

~~to the Waikato Regional Council at the time the resource consent application is lodged; and~~

- ~~d. Cattle, horses, deer and pigs are excluded from water bodies in conformance with Schedule C.~~

~~Waikato Regional Council restricts its discretion to the following matters: Matters of Control Waikato Regional Council reserves control over the following matters:~~

- ~~i. The content, compliance with and auditing of the Farm Environment Plan.~~
- ~~ii. The actions and timeframes to achieve Good Farming Practices or better in order to for undertaking mitigation actions~~

~~that maintain or reduce the diffuse discharge of nitrogen, phosphorus, sediment or microbial pathogens to water or to land where they may enter water.~~

- ~~ii.a. The effects, including cumulatively, of diffuse discharge of nitrogen, phosphorus, sediment and microbial pathogens, particularly where the activity may lead to an increase in the discharge of one or more contaminants.~~

- ~~ii.b. For enterprises, the procedures and limitations, including Nitrogen Reference Points for nitrogen surplus, to be applied to land that enters or leaves the enterprise.~~
- ~~iii. The actions, timeframes and other measures to ensure that the diffuse discharge of nitrogen from the property or enterprise, as measured by the five-year rolling average annual nitrogen loss as determined by the use of the current version of OVERSEER<sup>®</sup>, does not increase beyond the property or enterprise's Nitrogen Reference Point, unless other suitable mitigations are specified.~~
- ~~iv. Where the Nitrogen Reference Point exceeds the 75th percentile nitrogen leaching value, actions, timeframes and other measures to ensure the diffuse discharge of nitrogen is reduced so that it does not exceed the 75th percentile nitrogen leaching value by 1 July 2026.~~
- ~~v. The term of the resource consent.~~
- ~~vi. The monitoring, record keeping, reporting and information provision requirements for the holder of the resource consent to demonstrate and/or monitor compliance with the Farm Environment Plan.~~
- ~~vii. The timeframe and circumstances under which the consent conditions may be reviewed or the Farm Environment Plan shall be amended.~~
- ~~viii. Procedures for reviewing, amending and re-approving the Farm Environment Plan.~~
- ~~ix. Information to be provided to show that the property is being managed in a way that would not cause an increase in loss of contaminants, which may include annual Overseer modelling for the property or enterprise, or information on matters such as stocking rate, fertiliser application, imported feed and cropping~~

**Dates:**

- ~~I. For Priority 1 sub-catchments, and properties with a Nitrogen Reference Point of greater than 75th percentile nitrogen leaching value, by 1 July 2020~~
- ~~II. For Priority 2 sub-catchments, by 1 July 2023~~
- ~~III. For Priority 3 sub-catchments, by 1 July 2026~~

**Notification:**

~~Consent applications will be considered without notification, and without the need to obtain written approval of affected persons.<sup>104</sup>~~

**3.11.5.6 Restricted Discretionary Activity Rule – The use of land for farming activities/Te Ture mō ngā kōwhiringa mahi e herea ana – te whakamahinga o te whenua mō ngā mahinga pāmu**

**Rule 3.11.5.6 – Restricted Discretionary Activity Rule – The use of land for farming activities**

~~The use of land for farming activities that does not comply with the conditions, standard or terms of Rules 3.11.5.1 to 3.11.5.5 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. Cumulative effects on water quality of the catchment of the Waikato and Waipa Rivers.~~
- ~~ii. The diffuse discharge of nitrogen, phosphorus, sediment and microbial pathogens.~~
- ~~iii. The need for and the content of a Farm Environment Plan.~~
- ~~iv. The term of the resource consent.~~
- ~~v. The monitoring, record keeping, reporting and information provision requirements for the holder of the resource consent.~~
- ~~vi. The time frame and circumstances under which the consent conditions may be reviewed.~~
- ~~vii. The matters addressed by Schedules A, B and C.~~

**Notification:**

~~Consent applications will be considered without notification, and without the need to obtain written approval of affected persons.~~

### 3.11.5.6A Discretionary Activity Rule

Rule 3.11.5.6A - Discretionary Activity Rule

The use of land for farming that does not meet one or more of ~~conditions (1) to (5a) of Rule 3.11.5.3 or~~ conditions (1) to (6) of Rule 3.11.5.4 is a Discretionary activity.<sup>105</sup>

### 3.11.5.7 Non-Complying Activity Rule —~~Land Use Change~~/Te Ture mō ngā mahi kāore e whai i ngā ture – Te Panonitanga ā-Whakamahinga Whenua

Rule 3.11.5.7 - Non-Complying Activity Rule —~~Land Use Change~~

The use of land for farming that does not meet ~~[condition (5b) of Rule 3.11.5.3 or]~~ condition (7) of Rule 3.11.5.4 is a non-complying activity.<sup>106</sup>

~~Notwithstanding any other rule in this Plan, any of the following changes in the use of land from that which was occurring at 22 October 2016 within a property or enterprise located in the Waikato and Waipa catchments, where prior to 1 July 2026 the change exceeds a total of 4.1 hectares:~~

- ~~1. Woody vegetation to farming activities; or~~
- ~~2. Any livestock grazing other than dairy farming to dairy farming; or~~
- ~~3. Arable cropping to dairy farming; or~~
- ~~4. Any land use to commercial vegetable production except as provided for under standard and term g. of Rule 3.11.5.5 is a non-complying activity (requiring resource consent) until 1 July 2026.~~

**~~Notification:~~**

~~Consent applications will be considered without notification, and without the need to obtain written approval of affected persons, subject to the Council being satisfied that the loss of contaminants from the proposed land use will be lower than that from the existing land use.~~<sup>107</sup>

### 3.11.5.8 Permitted Activity Rule – Authorised Diffuse Discharges

The diffuse discharge of nitrogen, phosphorus, sediment and or microbial contaminants from farming onto or into land in ~~circumstances that may result in a contaminant entering water that would otherwise contravene section 15(1) of the RMA~~ is a permitted activity, provided the following conditions are met:

1. the land use activity associated with the discharge is authorised under Rules 3.11.5.1 to 3.11.5.7; and
2. the discharge of a contaminant is managed to ensure that after reasonable mixing it does not give rise to any of the following effects on receiving waters:
  - (a) any conspicuous oil or grease films, scums or foams, or floatable or suspended materials; or
  - (b) any conspicuous change in the colour or visual clarity; or
  - (c) the rendering of fresh water unsuitable for consumption by farm animals; or
  - (d) any significant adverse effects on aquatic life.<sup>108</sup>

### 3.11.5.9 Non-Complying Activity Rule – Unauthorised Diffuse Discharges

The diffuse discharge of nitrogen, phosphorus, sediment and or microbial contaminants from farming onto or into land in ~~circumstances that may result in a contaminant entering water that would otherwise contravene section 15(1) of the RMA~~ that does not meet one or more of the conditions of Rule 3.11.5.8 is a non-complying activity.<sup>109</sup>

**Consequential changes to Schedule A – Registration with Waikato Regional Council and Schedule B – Nitrogen Reference Point to implement changes to policies and rules in particular to amend NRP to refer to nitrogen surplus and not nitrogen leach**

## APPENDIX 2

### 34 Delegation of functions, etc, by local authorities

- (1) A local authority may delegate to any committee of the local authority established in accordance with the Local Government Act 2002 any of its functions, powers, or duties under this Act.
- (2) A territorial authority may delegate to any community board established in accordance with the Local Government Act 2002 any of its functions, powers, or duties under this Act in respect of any matter of significance to that community, other than the approval of a plan or any change to a plan.
- (3) Subsection (2) does not prevent a local authority delegating to a community board power to do anything before a final decision on the approval of a plan or any change to a plan.
- (3A) A unitary authority may delegate to any local board any of its functions, powers, or duties under this Act in respect of any matter of local significance to that board, other than the approval of a plan or any change to a plan.
- (3B) Subsection (3A) does not prevent a unitary authority delegating to a local board power to do anything before a final decision on the approval of a plan or any change to a plan.
- (4) *[Repealed]*
- (5) *[Repealed]*
- (6) *[Repealed]*
- (7) Any delegation under this section may be made on such terms and conditions as the local authority thinks fit, and may be revoked at any time by notice to the delegate.
- (8) Except as provided in the instrument of delegation, every person to whom any function, power, or duty has been delegated under this section may, without confirmation by the local authority, exercise or perform the function, power, or duty in like manner and with the same effect as the local authority could itself have exercised or performed it.
- (9) Every person authorised to act under a delegation under this section is presumed to be acting in accordance with its terms in the absence of proof to the contrary.
- (10) A delegation under this section does not affect the performance or exercise of any function, power, or duty by the local authority.
- (11) In subsections (3A) and (3B), **Auckland Council** and **local board** have the meanings given in section 4(1) of the Local Government (Auckland Council) Act 2009.

### 34A Delegation of powers and functions to employees and other persons

- (1) A local authority may delegate to an employee, or hearings commissioner appointed by the local authority (who may or may not be a member of the local authority), any functions, powers, or duties under this Act except the following:
- (a) the approval of a proposed policy statement or plan under clause 17 of Schedule 1:
- (b) this power of delegation.
- (1A) If a local authority is considering appointing 1 or more hearings commissioners to exercise a delegated power to conduct a hearing under Part 1 or 5 of Schedule 1,—
- (a) the local authority must consult tangata whenua through relevant iwi authorities on whether it is appropriate to appoint a commissioner with an understanding of tikanga Māori and of the perspectives of local iwi or hapū; and

(b) if the local authority considers it appropriate, it must appoint at least 1 commissioner with an understanding of tikanga Māori and of the perspectives of local iwi or hapū, in consultation with relevant iwi authorities.

(2) A local authority may delegate to any other person any functions, powers, or duties under this Act except the following:

(a) the powers in subsection (1)(a) and (b):

(b) the decision on an application for a resource consent:

(c) the making of a recommendation on a requirement for a designation.

(3) [*Repealed*]

(4) Section 34(7), (8), (9), and (10) applies to a delegation under this section.

(5) Subsection (1) or subsection (2) does not prevent a local authority delegating to any person the power to do anything before a final decision on a matter referred to in those subsections.