

**BEFORE THE INDEPENDENT COMMISSIONERS APPOINTED BY WAIKATO
REGIONAL COUNCIL**

In the matter of the Resource Management Act 1991

And a submission and further submission on Proposed Waikato
Regional Plan Change 1 – Waikato and Waipā River
Catchments (PPC1)

Submitter's Name: Theland Tahī Farm Group

Submission Number: 82022

Southern Pastures Limited Partnership

74062

Hearing Topic: **BLOCK 1**
Part B – Outcomes:
Overall direction and whole plan submissions
Values and uses
Objectives

LEGAL SUBMISSIONS
ON BEHALF OF THELAND TAHI FARM GROUP LIMITED AND SOUTHERN
PASTURES LIMITED PARTNERSHIP – BLOCK 1

Dated 25 March 2019

TOMPKINS | WAKE

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MAY IT PLEASE THE HEARING PANEL

Introduction and scope of submissions

1. These submissions are made on behalf of Theland Tahī Farm Group Limited (“Theland”) and Southern Pastures Limited Partnership (“SPLP” or “Southern Pastures”). SPLP made a submission on Proposed Plan Change 1 as notified (“PPC1”). It did not make a submission on Variation 1 to PPC1 and it did not make a further submission. Theland made a submission on Variation 1 to PPC1 and made a further submission in relation to both PPC1 and Variation 1 to PPC1.
2. While SPLP and Theland are generally aligned regarding the outcomes sought through the submission hearing process, each wishes to retain its independent submitter status. As such, the following submissions will address each submitter individually before moving on to consider matters which are common across both.
3. These submissions address the following matters:
 - (a) SPLP position on PPC1 and Block 1, in general terms;
 - (b) Theland position on PPC1 and Block 1, in general terms;
 - (c) Statement of Justine Kidd on behalf of Theland;
 - (d) Planning framework, Vision & Strategy and NPS-FM; and
 - (e) Block 2 hearing.

Southern Pastures position on Block 1 and PPC1

4. By way of background and to re-cap the statements in its submission, SPLP’s approach to farming is to be best-practice industry leaders in sustainable dairy farming. It owns ten farms within the Waikato Region which are located within the jurisdictional boundaries of both South

Waikato District Council and Taupo District Council. These farms can be described as within the “upper Waikato” catchment.

5. SPLP adheres to a set of Environmental, Social and Governance policies. For example, SPLP carries out reforestation of land unsuitable for pastoral farming because of contour and/or access constraints; and carries out riparian planting and ecological protection and restoration work, in accordance with the recommendations from ecological assessments. All waterways within SPLP farms are fenced to exclude stock from entering them.
6. SPLP has an interest in PPC1 in its entirety and supports the underlying principles of PPC1 which seek to give effect to the Vision & Strategy for the Waikato and Waipa Rivers (“Vision & Strategy”). However, it seeks amendments to the provisions of PPC1 which will provide better certainty of meaning as well as providing for opportunities for flexibility in land use management. SPLP believes that those farmer stakeholders who have implemented environmental policies and adhere to best practice should not be penalised because of the actions of other stakeholders who may not do the same.
7. Such matters will be the focus of Block 2 of the PPC1 hearing process. Nevertheless, SPLP acknowledges that the topics in Block 1 are fundamental to PPC1. In that regard, SPLP did not seek material changes to the objectives of PPC1 as notified. SPLP has an interest in Table 3.11-1 and effectively reserved its position on the numerical water quality attributes.¹
8. As the Commissioners are aware, other parties who have engaged water quality experts have questioned those numerical attributes. Whether these are appropriate and how they are to be implemented is subject to

¹ SPLP accepted Table 3.11-1 provided its relief sought elsewhere in its submission is accepted. Its relief included that WRC amend PPC1 so that its provisions clearly set out how the attributes in Table 3.11-1 will be implemented, particularly in the context of resource consent applications for farming activities.

expert caucusing. SPLP has not engaged any technical expertise to date. However, it supports the proposed caucusing and will seek to rely on experts engaged by parties with whom it is aligned.

“De-coupling” of rules

9. SPLP’s submission raised a concern regarding the section 32 evaluation for PPC1, specifically that it did not provide an analysis or conclusion as to whether the proposed new rules 1 to 6 are discharge rules (s15 RMA) or land use rules (s9 RMA), or a hybrid of the two. It sought relief that PPC1 be amended to clarify the type of resource consent which must be applied for in respect of its proposed new rules.
10. Counsel understands that Waikato Regional Council accepts that the rules which are “hybrid” rules should be “de-coupled” to clearly describe the type of rule and whether it is a land use or a discharge rule. On that point, it is acknowledged that the relief sought in relation to the land use change rule set out in the SPLP submission adopts the same “hybrid” referencing of the language in section 15. It is accepted that any relief granted in relation to that point of its submission will need to ensure that the final wording achieves certainty as to the type of consent required.

Support for other submitters

11. As stated above, SPLP has not filed expert evidence to date, primarily due to a lack of resources to do so. However, SPLP, together with Theland, has engaged with other “upper Waikato” stakeholders to discuss opportunities for resource sharing for the purposes of PPC1 submission hearing process. In that regard, SPLP supports the position of Wairakei Pastoral Limited (“WPL”) and intends to continue that support throughout the hearing process. However, SPLP wishes to reserve its position to call its own expert evidence for the purposes of Block 2.

Theland Tahī Farm Group Limited

12. Theland lodged a submission on Variation 1 to PPC1. In my submission, this provides scope for Theland to seek amendments across the entirety of the PPC1 provisions. Counsel understands that neither the Hearing Panel or counsel for WRC takes issue with this approach.
13. While Theland raised concerns with the section 32 evaluation and PPC1/Variation 1 in its entirety, it does not wish to pursue relief to have PPC1/Variation 1 withdrawn at this point. Nevertheless, the submission point provides scope to pursue relief across the proposed provisions. In addition, Theland made a further submission on PPC1 and Variation 1. The further submission broadly outlined Theland's position on PPC1 as it has evolved over the time since it lodged its original submission on Variation 1.
14. Theland supports the purpose of PPC1/Variation 1 to give effect to the Vision & Strategy and the NPS-FM. However, it has concerns about the merits of the provisions as notified and the recommendations from the WRC section 32A report writer. In that regard, the critical issues for Theland are the policies and rules relating to farming activities. Accordingly, its focus will be on Block 2 topics.
15. Theland sought amendments to the use value for municipal and domestic water supply. The relief seeks amendments to, *inter alia*, include reference to primary production industries and that rivers are working rivers. However, this relief should not be construed as seeking to enable or allow degradation, or further degradation, of the Waikato and Waipa Rivers. Similar to SPLP, Theland sought amendments to Objective 2 and Objective 3 to clarify meaning and intent of the objectives. It does not oppose the amendments proposed by the author of the section 42A report. However, Theland reserves its position on the basis that the policies rules and methods are yet to be addressed through the hearing

process. Theland raised concerns with Objective 1 and the choice of “Scenario 1” as the basis for PPC1/V1.

16. Consequently, the water quality attributes in Table 3.11-1 are at issue. While Theland accepts that Scenario 1 is the basis for PPC1/V1 and does not wish to pursue relief to amend the “Scenario” to an alternative, it remains concerned with the numerical attributes in Table 3.11-1. This concern has been reiterated by the evidence of other submitters whose water quality experts have raised questions about the validity and robustness of those numerical attributes. Accordingly, Theland supports the expert caucusing on Table 3.11-1 and intends to rely on the experts engaged by parties with whom it is aligned.

“De-coupling” of rules

17. Theland supports the proposal to clearly state whether each proposed rule is a land use or discharge rule.

Support for other submitters

18. Theland has not filed technical expert evidence to date, primarily due to a lack of resources to do so. However, as noted above, Theland, has engaged with other “upper Waikato” stakeholders to discuss alignment of the outcomes sought through the submission process and opportunities for resource sharing for the purposes of the PPC1 hearing process. In that regard, Theland supports the position of Wairakei Pastoral Limited (“WPL”) and intends to continue that support throughout the hearing process. However, SPLP wishes to reserve its position to call its own expert evidence for the purposes of Block 2 should that be necessary or appropriate.

Statement of Ms Justine Kidd

19. Ms Kidd is the Chief Executive Officer of Theland Farm Group and has prepared a statement of “lay” evidence. The purpose of this statement is to outline Theland’s key issues in relation to PPC1/V1 and to provide a

description of the farming practices it implements or seeks to implement “on farm”. While her statement is characterised as lay evidence, Ms Kidd has significant experience and background in the dairy industry and is nevertheless qualified to speak on a range of farming matters.

20. I was advised late last night that Ms Kidd is unwell and unfortunately is unable to attend the hearing today. However, Mr Pearce Watson, Head of Assets for Theland Farm Group, is in attendance and can address the Hearing Panel. He has read and is familiar with the content of Ms Kidd’s statement and will be able to address the Hearing Panel on the matters it covers.

Planning framework, Vision & Strategy and NPS-FM

21. The Hearing Panel has heard from counsel for WRC and other submitters in relation to these matters and is aware of the Resource Management Act 1991 (“RMA”) planning hierarchy which applies to its consideration of PPC1/V1. I do not intend to re-state the obvious regarding the hierarchy of planning documents. However, I do wish to make some brief submissions regarding interpretation and implementation of the Vision & Strategy, given its status as the key direction setting document for PPC1/V1 and water quality matters in the Waikato and Waipa River catchments.
22. As you know, the Vision & Strategy contains 13 objectives which are “to be pursued” in order to achieve the Vision, which includes “prosperous communities”. The objectives do not have an order of priority. However, case law and the Vision statement supports the proposition that the restoration and protection of the Waikato and Waipa Rivers is a corner stone of the Vision & Strategy.² That aspiration and long-term objective is not inconsistent with the NPS-FM. It anticipates that activities within the catchment will achieve a proportionate degree of “betterment”.³

² *Puke Coal v Waikato Regional Council* [2014] NZEnvC 223.

³ *Ibid.*

23. While the restoration of the Waikato and Waipa Rivers is assumed to lead to economic benefits, it appears the CSG process did not generate evidence which quantifies what that benefit is anticipated to be. Putting aside the issue of interpretation of the Vision & Strategy regarding economic matters, PPC1/V1 is nevertheless an RMA document which must be prepared in accordance with Part 2.⁴ In contrast, the Vision & Strategy was not promulgated under the RMA.
24. Against this background, while it is submitted that the NPS-FM and the Vision & Strategy can be read together consistently, it follows that if either or both of two caveats in *King Salmon*⁵ are in play in the course of evaluating proposed provisions of PPC1/V1, the Hearing Panel may have recourse to Part 2. In short, the purpose of the RMA forms the basis for the plan change, but the Vision & Strategy sets the direction (restoration and protection of the Waikato and Waipa Rivers), and carries significant weight in any evaluation of its provisions.

Block 2

25. For completeness, counsel wishes to record that both Theland and SPLP reserves their position on Block 1 in light of the topics to be addressed in Block 2 and the expert caucusing yet to be convened on Table 3.11-1. Similarly, it reserves its position to call technical expert evidence in Block 2.



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⁴ RMA, section 66(1)(b).

⁵ Culminating in the decision in *Environmental Defence Society v New Zealand King Salmon Company Limited* [2014] NZSC 38 [17 April 2014].

