

**BEFORE THE MANAWATU WANGANUI REGIONAL COUNCIL**

IN THE MATTER OF The Resource Management Act 1991

AND

IN THE MATTER OF Hearing on Submissions Concerning  
the Proposed Horizons Regional  
Council One Plan for the  
Manawatu Wanganui region.

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**Combined Position Statement of Fish and Game New Zealand – Wellington Region,  
and the Royal Forest and Bird Protection Society of NZ, on Matters Relating to  
Rule 13.1 of Horizons Proposed One Plan**

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**16<sup>th</sup> March 2010**

## **1. Introduction**

Following direction from the hearing panel, representatives from the Wellington Fish and Game Council, met with Federated Farmers on the 15<sup>th</sup> of March 2010 to explore the potential for reaching agreement on the wording of rule 13.1. These discussions are continuing. However, in view of time constraints it has not been possible to reach potential agreement at this stage.

Pending any further discussion with other parties, representatives of the Wellington Fish and Game Council, and the Royal Forest and Bird Society, have reached agreement on a joint position in regards to Table 13.2 and rule 13.1, to be provided to the hearing panel on the Water Chapters of Horizons Proposed One Plan, as follows.

## **2. Background**

Water quality is one of the ‘big four’ issues identified and addressed in the Proposed One Plan, as of regional significance. Technical evidence presented by Horizons on the state of the regions freshwater resources, including physiochemical and biological measures, has clearly demonstrated the significant impact pollution from agricultural land use has in some catchments, with non point source inputs of nutrient, sediment, and faecal bacteria identified as major causes of poor water quality and degraded ecosystem functioning.

To address the issue of non point source pollution, in key target catchments, Horizons proposed, as notified, that existing intensive farming operations, and new intensive farming operations in the region, complete a Farmer Applied Resource Management (FARM) strategy, under rule 13.1. The FARM strategy as notified was a performance criteria which specifically outlined how an intensive farming operation planned to:

1. Operate within the POP nitrogen leaching limits determined by land use capability (LUC) as outlined in table 13.2;
2. Minimise freshwater contamination from nitrogen, phosphorus and faecal microbes;
3. Meet instream core allocation and minimum flow requirements;
4. Meet the requirements of the Clean Stream Accord including the exclusion of stock from streams, and the establishment of culverts or bridges at stock crossing points.

The FARM strategy approach provides an integrative mechanism to deliver catchment water quality outcomes through customised farm level assessments and management. It incorporates best management practices, and provides multi objective gains including controlling and limiting inputs of nitrogen, phosphorus, faecal microbes, and sediment, all of which have been shown to significantly impact on freshwater ecosystem integrity.

Following lodgement of hearing evidence, however, Horizons officers recommended removing performance criteria for water takes from rule 13.1 (rule 15.13 still covers core allocation and minimum flow restrictions), and the removal of the FARM Strategy as a performance condition. The FARM strategy is now recommended purely as an

information gathering requirement. Altering the status of the FARM strategy, as a performance condition to an information requirement, means that the standards established by the FARM strategy will need to be explicitly included in rule 13.1 as performance standards and areas of control. Incomplete incorporation of those aspects of the FARM strategy that established holistic integrative management of farming operations, could significantly compromise the aims, and objectives of the POP.

A number of submitters including Fonterra and Federated Farmers are also recommending the replacement of rule 13.1 with a non regulatory approach to controlling, some limited, farming operations, within key target catchments.

### **3. Joint Position of Fish and Game New Zealand, Royal Forest and Bird Society, and the Department of Conservation**

The FARM strategy was not designed to solely address the issue of Nitrogen leaching to water, but was established as a holistic approach for managing a number of farming operations which significantly impact on aquatic ecosystems, including nitrogen, phosphorus, sediment, and faecal microbe inputs, through a selection of best management practices. We therefore disagree with the position of Federated Farmers which seek to only control, some activities of Dairy Farming in identified catchments, and specifically excludes irrigated sheep and beef, cropping, and commercial vegetable growing. We also disagree with the position of Fonterra which seeks to only address N loss from intensive farming operations in target catchments, and fails to address issues of phosphate, sediment and faecal bacteria inputs into waterbodies.

Sediment inputs into waterbodies is of specific concern to the Wellington Fish and Game Council and the Royal Forest and Bird Society, as both suspended and deposited sediment from land erosion can significantly impact on aquatic biodiversity. Deposited sediment can clog interstices of streambed substrates leading to a reduction in water exchange with surface waters and causing the interstitial layer to become oxygen depleted. Silt accumulation and these associated factors generally bring about a change in invertebrate community structure from high quality EPT taxa to increases in the densities of chironomids and oligochaetes, which impacts on macroinvertebrate feeding fish species. High deposited sediment levels impact on trout spawning success and recruitment, and significantly reduce available habitat for some native fish species. Suspended sediment adversely impacts on fish species by: damaging and clogging their gills; reducing growth rates; and increasing disease susceptibility; reducing visibility for site feeders; and reducing light reaching into the stream for photosynthesis, which reduces algae and macrophytes, thus food availability for invertebrates and fish.

We agree with Horizons Regional Council that all intensive farming operations including: Dairy farming, cropping, commercial vegetable growing, and intensive sheep and beef farming, together with associated activities, in target catchments, and any new intensive farming operations which may be established in the region, be controlled.

We also, agree with Horizons Regional Council that intensive farming activities within the key target catchments are controlled through a rule which is multi objective, holistic, and integrative.

As notified, the Plan required that intensive farming operations are undertaken in accordance with a FARM strategy. However, if it is intended that such a strategy or elements of the FARM strategy are to be an information requirement rather than a set of standards then it is our concern that this approach would not be, in itself, sufficient to address the adverse effects of farming on freshwater resources, and provide the key outcomes sought in the POP. Therefore, if the FARM strategy was to be an information collecting methodology only, the key outcomes and performance criteria, sought through the FARM strategy would need to be provided for within the rule or the Plan itself.

We are in agreement with recommendations of Federated Farmers that:

1. Nutrient management plans are implemented through best management practices;
2. Effluent management should be undertaken in accordance with industry standards; and that
3. 100% stock exclusion from waterbodies and riparian areas should occur; as with
4. Exclusion of dairy farming from rare, threatened, and at risk habitats

We agree that the first critical step towards addressing issues of nitrogen entering waterbodies within the Horizons region is to ensure all farmers are managing nutrients on farm using good environmental practice. However, while supporting the use of nutrient budgets, Federated Farmers do not specify within their recommended rule any requirement for farmers to implement their nutrient budgets, or/and meet specified standards or even guidelines. As recognised by Fonterra, "*the objective must be such that its achievement can be measured*" (Willis, EIC, Appendix pg 1). There is a serious lack of certainty regarding the approach proposed by Federated Farmers, in terms of measuring improvements in farming practices in regards to reducing N loss to water, and ultimately working towards improving ecosystem health.

In addressing the issue of the establishment of clear measurable targets, by which to monitor progress towards, Fonterra has essentially supported the approach of Horizons in the retention of Table 13.2 albeit with amended targets. As discussed, in the evidence of Dr Alec Mackay, best management practices (BMP) alone have limited utility to achieve the environmental benefits sought through the POP (Mackay, EIC, paragraph 95). Clear targets in regards to nutrient loss need to be established (Mackay, EIC, paragraph 95). Expert evidence suggests that the establishment of clear N loss standards/targets is the best available method for achieving the intended purpose, and no other viable alternatives have been put forward.

In regards to controlling nitrogen inputs, we agree that nitrogen leaching targets should be gradually established and enforced as detailed in the evidence of Horizons experts. We consider that the lead in times provided for in the notified version of Table 13.2, are

sufficient to enable compliance to be achieved. However, if the panel is concerned that implementation of Table 13.2 as notified would prove inequitable, the Wellington Fish and Game Council and the Royal Forest and Bird Society would support the retention of Table 13.2 as proposed by Dr Mackay.

The Wellington Fish and Game Council and the Royal Forest and Bird Society, do not agree that a permitted activity rule, as proposed by Federated Farmers which only addresses some issues associated with dairy farming, for at least the first 5 years of the Plan is adequate to protect the ecological integrity of freshwater resources. The approach recommended by Federated Farmers is essentially one of informal monitoring for a period of 5 years (and considerably longer if a plan change is required) before any further decisions are undertaken regarding the need to set standards against which compliance is to be assessed. If this approach is accepted then the earliest prospect for tangible improvements may be approximately 10 years depending on the response time of the environment. Given the existing unsustainable nature of intensive farming activities in the target catchments we do not believe this is satisfactory, in terms of meeting the purposes of the Act.

The proposal by Fonterra goes some way to addressing the adverse effects farming operations are having on freshwater resources in target catchments, by at least establishing N targets by which to measure progress and compliance against. However, the limited scope of the permitted activity rule fails to provide an integrative/ holistic approach to regulating farming activities and therefore would fail to provide the multi objective benefits as currently proposed under rule 13.1. For example Fonterra's proposed permitted activity rule fails: to address phosphate, sediment, and faecal microbe contamination of waterbodies; it fails to establish stock exclusion from waterbodies; and it fails to protect rare, threatened or endangered habitats. Only when N loss standards cannot be achieved does Fonterra recommend the adoption of a controlled activity rule which essentially reflects the current intent of rule 13.1 as notified, as the FARM strategy is retained as a performance condition.

It is our view that key environmental concerns as expressed in the POP can be substantially addressed by the exclusion of stock from waterbodies as is a current requirement of the FARM strategy. Stock exclusion, including the establishment of culverts or bridges for stock crossing sites, and the establishment of permanent riparian margins, will substantially assist with reducing phosphates, nitrogen, faecal bacteria, and sediment inputs into freshwater resources. Full stock exclusion and set back distances from waterbodies is a method which can be clearly, reasonably, and readily applied (clear and certain), with multi environmental benefits. We note that this is a key component of the Clean Streams Accord. However, we disagree that implementation of the Clean Streams Accord in itself is sufficient to address issues of water quality in key target catchments. As discussed above all intensive farming operations, not just dairy farming should be required to exclude stock from waterbodies, and establish appropriate riparian margins. Also the definition of stream under the Clean Streams Accord is insufficient. Stock should be excluded from, and set back distances established for, small and ephemeral rivers also.

As discussed in the evidence of Dr Joy the solutions for poor ecosystem health “*are simple: reduce nutrient and sediment inputs to the rivers. This reduction must be catchment based, and the management practices required to achieve this have advantages over and above simply river improvements. Planting of catchments and riparian areas reduce sediment and nutrient inputs and capture carbon, but this must occur in small even ephemeral streams, that is where the most advantage can be gained. These small/ephemeral streams have been left out of accords and regulation to date but they are of crucial importance to restoring rivers. The area of riparian land in relation to water volume is much higher in small streams so this is where the best ratio of nutrient and sediment reduction per volume of water can occur. As streams become larger this ratio reduces and consequently the gains from planting diminish. Thus it is crucial for any restoration protect effort to start in headwater and small feeder streams*

” (Dr Joy, Supplementary Evidence, paragraph 2.17).

Following consultation with Horizons, and in adopting a pragmatic approach the Wellington Fish and Game Council and the Royal Forest and Bird Society would accept ‘river’ to be specified as “*either a permanently flowing body of water, or intermittently flowing body of water with an active bed width of greater than 1m*”, for the purpose of stock exclusion and the establishment of riparian margins.

The Wellington Fish and Game Council and the Royal Forest and Bird Society acknowledge that any rule would need to be responsive to the dynamic conditions which farming and horticulture businesses operate. We agree with Fonterra that:

- § “*The objective must be such that its achievement can be measured and influenced by the actions of the industry, with the support of the Council and community, during the timeframe available;*
- § *There must be practical actions, that are currently available and able to be incorporated into general farming practice, that can be taken by the industry to achieve the objective;*
- § .....
- § *Any changes in behaviour and activity that occur within the industry must be sustainable in the long term*” (Willis, EIC, Appendix 1, pg 1).

We are satisfied that rule 13.1 as currently framed, with the movement of the FARM strategy from a performance standard to an information method, along with the establishment of performance criteria including the implementation of: audited whole of farm nutrient management plans; stock exclusion from waterbodies; and establishment of riparian margins; provides for both environmental improvement, and offers business flexibility through firstly setting performance standards which may be achieved by a variety of mechanisms while providing for discretion over the manner in which conditions are imposed.

The Wellington Fish and Game Council and the Royal Forest and Bird Society would be willing to consider further ways of refining the rule to address outstanding concerns

#### **4. Permitted vs Controlled Activity Status**

The Wellington Fish and Game Council and the Royal Forest and Bird Society, do not support the establishment of a permitted activity rule to control intensive farming activities in identified target catchments. At minimum a controlled activity status is required to ensure that farming activities are managed in a holistic and integrative manner, to ensure environmental outcomes are achieved, to achieve economic efficiency and greater certainty for farming operators, to ensure the future well-being and amenity values of the wider community are met, and for environmental sustainability of the natural environment.

Furthermore, the RMA (1991) s70, and s107, prevents Regional Councils from allowing as permitted under s15(1)(RMA) a person to discharge a (b) “*contaminant onto or into land in circumstances which may result in that contaminant (or any other contaminant emanating as a result of natural processes from that contaminant) entering water*”, which may cause (s70 (1)(d) & s107(1)(d)) “*Any conspicuous change in the colour or visual clarity*” (s70(1)(e) & s107(1)(e)) “*Any emission of objectionable odour*”; (s70(1)(f) & s107(1)(f)) “*The rendering of fresh water unsuitable for consumption by farm animals*”; (s70(1)(g) & s107(1)(g)) “*Any significant adverse effects on aquatic life*”. While no judicial ruling in regards to s15 has been invoked to control and stop contaminants from non point source discharges entering water, still there is a legal argument that supports this contention.

As detailed in the Environment Court ruling on Environment Waikato VAR 5, for an activity to be permitted the rule should be:

- § Clear and certain;
- § Not contain subjective terms;
- § Be capable of consistent interpretation and implementation by lay people without reference to council officers;
- § Not retain later discretions (decision making) to council officers

As also stated by Mr van Voorthuysen the “*Permitted activity rules can play a useful management purpose for authorising simple activities that are undertaken on a routine and frequent basis and where effects of those activities are demonstrably minor and the risks to the environment if they are misused are small*” (Van Voorthuysen EIC, para 18.5). Expert evidence presented by Horizons at the Proposed One Plan hearing has clearly demonstrated that non point source pollution in the target catchments is causing significant degradation of freshwater resources and adversely impacting on aquatic integrity. The Wellington Fish and Game Council and the Royal Forest and Bird Society also, do not accept that rule 13.1 could meet the requirements for a rule to be permitted, as discussed above, as:

1. In order for Horizons to determine that the activity is being undertaken in accordance with performance standards, there are significant information requirements from the farm manager;

2. Under areas of control/ discretion Horizons is required to make substantial decisions in order to give effect to the policies within the POP;
3. Many of the items in the proposed rule require specialist technical expertise and judgement;
4. There are significant compliance monitoring costs for Horizons; and
5. The adverse effects of the activity on the environment are more than minor.

Given the evidence to date (Botha, Deans, Johnson) on regulatory vs non regulatory control of farming and the uptake and success of the Clean Streams Accord, we do not consider that a non regulatory approach would provide adequate certainty that the aims, objectives and policies in the plan would be achieved, or the purpose of the Act met, especially if it has economic consequences for the farming business.

## **6. Key components of the solution**

The Wellington Fish and Game Council, the Royal Forest and Bird Society, and the Department of Conservation support the s42a officers recommended amendments to Policy 6-7 and we ask that those amendments be included in full.

The Wellington Fish and Game Council, and the Royal Forest and Bird Society, support the implementation of a holistic, integrative, multi objective rule for controlling intensive farming operations in target catchments to ensure that freshwater resources are protected.

The rule should include:

- § Stock exclusion from waterbodies, including wetlands, within clearly defined time frames;
- § Establishment of set back distances from waterbodies ie riparian margins, within specified timeframes;
- § Establishment of stock crossings including bridges and culverts, with effluent run off to paddock;
- § Exclusion of farming from rare, threatened, or at risk habitats;
- § Adoption of best management practices for all farming activities including effluent management;
- § Preparation and implementation of nutrient budgets to control phosphorus and nitrogen loadings to waterbodes, and to ensure N leaching targets are met;
- § Information as stipulated by the Regional Council, including but not limited to nutrient budgets and implementation, effluent management, irrigation, and use of stock feed pads, should be prepared and provided to the Regional Council, and be audited by the Regional Council as required;
- § Education, advice and assistance with Best Management Practices in order to achieve the above, should be provided to applicants.

## **7. Conclusion**

Evidence clearly shows that intensive agricultural land uses are significantly impacting on freshwater ecological integrity and amenity values within specific catchments in the region. The justification for a regulatory framework is based on the premise that without such a framework freshwater values will not be maintained or the purposes of the Act met. We do not agree that a non regulatory approach to controlling certain limited farming activities will protect the region's freshwater resources, maintain or enhance aquatic integrity, or meet the purpose of the Act, in regards to sustaining the potential of natural and physical resources to meet the needs of future generations and safeguarding the life supporting capacity of water and freshwater ecosystems. To meet the purpose of the Act and the aims, objectives and policies within the POP, it is important to manage the operations within the farming business in an integrative and holistic manner. We ask that the hearing panel retain rule 13.1 as controlled and retain the holistic integrative approach to managing intensive farming operations inherent in the rule, and associated provisions, as notified.

As stated succinctly by the Ministry for the Environment in a report titled the “*Water Programme of Action: The Effects of Rural Land Use on Water Quality*”:

*“We are observing that water quality in some water bodies (particularly those passing through catchments with mainly agricultural land use) is declining and/or not meeting desirable water quality ‘standards’. A major contributing factor is diffuse discharges from rural land use and intensified agricultural activities. Such activities have economic benefits, but they put pressure on water bodies to cope with additional nutrients (eg, from animal excreta and fertilisers), micro-organisms and sediment. The underlying reason why these activities are impacting on water quality, and therefore the problem we need to address, is a lack of effective action in the management of diffuse discharges of contaminants on water quality, in some catchments [own emphasis].”<sup>1</sup>*

Yours sincerely

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<sup>1</sup> Water Program of Action: The Effects of Rural Land Use on Water Quality, Technical Working Paper July 2004, Ministry for the Environment.