

BEFORE THE ENVIRONMENT COURT

Under the Resource Management Act 1991 ("Act")

In the matter of appeals under clause 14 of the First Schedule to the Act concerning the Proposed One Plan for the Manawatu-Wanganui Region and the topic of Surface Water Quality – non-point source

between **FEDERATED FARMERS OF NEW ZEALAND**
ENV-2010-WLG-000148

and **MINISTER OF CONSERVATION**
ENV-2010-WLG-000151

and **DAY, MR ANDREW**
ENV-2010-WLG-000158

and **HORTICULTURE NEW ZEALAND**
ENV-2010-WLG-000155

and **WELLINGTON FISH & GAME COUNCIL**
ENV-2010-WLG-000157
Appellants

and **MANAWATU-WANGANUI REGIONAL COUNCIL**
Respondent

Statement of Rebuttal Evidence of **HELEN MARIE MARR** on behalf of the Minister of Conservation and Wellington Fish & Game Council

Dated: 18 April 2012

1. **INTRODUCTION**

1.1 My full name is Helen Marie Marr. I have prepared evidence in chief on behalf of the Minister of Conservation and the Wellington Fish and Game Council in this matter. In this rebuttal evidence I rebut matters raised in the evidence of Mr Willis and Mr Hansen.

1.2 My qualifications and experience are set out in my evidence in chief.

1.3 For the purpose of this evidence, I have adopted the same terminology to refer to the Proposed Horizons One Plan as used in my evidence in chief.

Expert Witness Code of Conduct

1.4 I have been provided with a copy of the Code of Conduct for Expert Witnesses contained in the Environment Court's Consolidated Practice Note 2011. I have read and agree to comply with that Code. This evidence is within my area of expertise, except where I state that I am relying upon the specified evidence of another person. I have not omitted to consider material facts known to me that might alter or detract from the opinions that I express.

Approach to rebuttal evidence

1.5 Following expert conferencing by planners, a large number of matters remain in contention. I have addressed most of those in my evidence in chief. However, I provide a brief response to the following issues:

- (a) The wording of Objective 6-1;
- (b) An alternative regime for Horticulture;
- (c) The effectiveness of the grandparenting of existing dairy farms as included in Mr Willis's evidence; and
- (d) The permitted and controlled activity rules for dairy farming proposed by Mr Hansen.

2. **OBJECTIVE 6-1**

2.1 The MV POP¹ of Objective 6-1 reads:

“Surface water bodies and their beds are managed in a manner which safeguards their life supporting capacity and advances the achievement of the Values in Schedule AB”.

2.2 I conditionally supported this wording in my evidence in chief (I will discuss later that ‘condition’), largely on the basis that it was agreed to by the majority of parties.

2.3 The record of planner conferencing² notes that I do not agree with that wording. To clarify, this is because, as noted in my evidence in chief³, while I support the wording agreed at mediation, I consider that ‘recognise and provide for’ is *more* appropriate than ‘advance the achievement of’ when referring to the Values in Schedule AB. I will discuss this in more detail below.

3. **INCLUSION OF LIFE SUPPORTING CAPACITY**

3.1 In planner conferencing, Mr Willis recorded that he did not support the inclusion of reference to ‘safe guarding life supporting capacity’ in this objective. Mr Willis does not discuss this issue in his evidence in chief, and his reasons are not recorded in the record of planner conferencing.

3.2 My reasons for supporting inclusion of life supporting capacity in this Objective are discussed in paragraphs 73 to 75 of my evidence in chief. One of the reasons why I recommended the inclusion of ‘safeguards the life supporting capacity’ was that I consider that an objective to simply ‘advance the achievement of’ life supporting capacity (as one of the Values) would not be an appropriate way to achieve the purpose of the RMA. The wording included in Ms Barton’s evidence in chief inadvertently omitted the reference to life supporting capacity and only required the advancement of life-supporting capacity. It has since become clear that Horizons supports the inclusion of the reference to life-supporting capacity in the mediated version of Objective 6-1 set out above. However, I understand that Mr Willis will propose deletion of the words “safeguards their life supporting capacity” in his rebuttal evidence I have therefore addressed this issue further in my rebuttal evidence below.

¹I note that this is not fully resolved as some parties reserved their position on this wording.

²Record of planner conferencing on the topic of surface water quality - non-point source discharges held on 4th and 5th April 2012

³paragraph 72

3.3 Section 5(2)(b) of the RMA specifies that part of sustainable management is 'safeguarding the life-supporting capacity of air, water, soil, and ecosystems.' I do not consider that simply 'advancing the achievement' of life-supporting capacity of water bodies is equivalent to 'safeguarding' it.

3.4 In my view, the wording 'advances the achievement of' is open to a high level of discretion as to whether the objective is being achieved. That is, the objective could be effectively achieved by a very small advancement towards achieving the Schedule AB Values over a long period of time, which I do not consider is consistent with the relevant issue in the POP (Issue 6-1), which is that:

"The quality of many rivers and lakes in the Region has declined to the point that ecological values are compromised and contact recreation such as swimming is considered unsafe..."

3.5 I also consider that in a situation where life-supporting capacity is severely compromised (to the point where it is not safeguarded currently, as is the case in relation to some small streams affected by point source discharges that I am familiar with) that a minor advancement towards improvement would not be consistent with the requirement in section 5 to 'safeguard' life-supporting capacity.

3.6 The requirement to safe-guard life supporting capacity in section 5 of the RMA is, in my view, not something that can be watered down. Section 5 makes it clear that safe-guarding life supporting capacity is one of the key tenets of sustainable management. In fact, if safeguarding the life supporting capacity of the degraded waterways is not achieved then the sustainable management purpose in section 5 of the RMA will not be achieved.⁴

3.7 As set out in my evidence in chief⁵ and the evidence of Ms Sweetman, reference to life supporting capacity is also consistent with the National Policy Statement for Freshwater Management ("the NPSFM"). In particular, Objective A1 of the NPSFM states:

"To safeguard the life-supporting capacity (my emphasis), ecosystem processes and indigenous species including their associated ecosystems of fresh water in sustainably managing the use and development of land, and of discharges of contaminants".

⁴ *Campbell & Others v Southland District Council* (W 114/94)

⁵ Paragraph 73

4. **RECOGNISE AND PROVIDE FOR**

- 4.1 Objective 6.1 in the NV POP used the wording ‘recognise and provide for’ in relation to the Schedule AB Values and was changed to ‘have regard to’ in the DV POP. This wording was discussed at length at the council level hearing. While it is not discussed at length in the council hearing panel’s decision, my understanding, from having taken part in and listened to those discussions at the hearing, is that there were concerns the wording ‘recognise and provide for’ ‘elevated’ certain matters to the level of those matters identified as ‘matters of national importance’ in section 6 of the Act.
- 4.2 The reason for this concern was the similarity in wording used in the Objective and in section 6 of the RMA – ‘to recognise and provide for’, and that to use these words in Objective 6.1 would elevate the issue of surface water quality to be a matter of national importance.
- 4.3 In my opinion, that analysis of the wording is incomplete and as a result is inaccurate. The full phrase in section 6 is ‘recognise and provide for the following matters of national importance’ (my emphasis). The wording of the NV POP objective did not include the words ‘matters of national importance’. I do not consider that simply using the wording ‘recognise and provide for’ elevates matters to those of national importance or to the same level as those identified in section 6 of the Act. I consider that it is open for decision-makers to use this wording in the context of resource management issues of regional significance, such as surface water quality. I illustrate this point in the following two examples.
- 4.4 Firstly, the phrase ‘recognise and provide for’ is used in both the National Policy Statement for Renewable Electricity Generation (NPSREG) and the National Policy Statement for Electricity Transmission (NPSET) to direct decision makers to ‘recognise and provide for the ...benefits⁶ of this infrastructure and its effective operation. Electricity generation or transmission are not matters of national importance in section 6, and use of the phrase ‘recognise and provide for’ in these NPS’s does not elevate them to such matters⁷.
- 4.5 In addition, it is not unusual in planning documents to use terms such as “give effect to”, “have regard to”, “provide for”, ‘recognise’ when providing direction to

⁶NPSET Policy 1 and Policy 2, NPSREG Policy A

⁷Although the NPSREG identifies this as ‘national significance’.

decision makers on the particular importance of an issue, when that issue is not one of national importance.

- 4.6 The phrase 'recognise and provide for' is used in the MV POP in relation to allowing for the operation, maintenance and upgrade of infrastructure⁸ and its adverse effects.
- 4.7 It would seem inconsistent with the RMA to 'recognise and provide' for particular adverse effects (those associated with infrastructure) in the POP on the one hand, and not to recognise and provide for the Values on which those, and other, effects will be felt on the other.
- 4.8 I understand that the phrase 'recognise and provide for' means that actual provision is to be made for the matter⁹. I consider that improving the quality of degraded surface water within the Region towards the levels that the community has supported through the Schedule AB Values is a matter for which actual provision needs to be made, rather than potentially allowing minor incremental improvements over an undefined time period. This is also consistent with the NPSFM, which requires that freshwater objectives be set and for degraded water quality to be improved over time.
- 4.9 For these reasons, I prefer wording which includes 'recognise and provide for' the Schedule AB Values. And in particular, in my opinion, this wording is necessary if reference to 'life supporting capacity' in Objective 6.1 is to be removed.

5. **CONCLUSION ON OBJECTIVE 6-1**

- 5.1 In my opinion, the most appropriate way to achieve the purpose of the Act (the section 32 test for objectives) and to give effect to the NPSFM (section 62(3) requirement) is for the Objective to be worded as follows:

*Surface water bodies[^] and their beds[^] are managed in a manner
that recognises and provides for the Values~~has regard to the~~
Values in Schedule AB.*

- 5.2 In the alternative, if the Court finds that it prefers the 'advances the achievement of' wording, then I consider that life-supporting capacity should be separately provided for in this objective, and it should read:

⁸Policy 3-3

⁹Gill v Rotorua DC (1993) 2 NZRMA 604 and Marlborough DC v Southern Ocean Seafoods [1995] NZRMA 220 & 336 and Bleakley v Environmental Risk Management Authority [2001] 3 NZLR 213 and Trio Holding v Marlborough District Council (1996) cited in Salmon Resource Management Act 1991.

Surface water bodies[^] and their beds[^] are managed in a manner that safe-guards their life-supporting capacity and advances the achievement of the Values~~has regard to the Values~~ in Schedule AB.

6. ALTERNATIVE REGIME FOR HORTICULTURE

6.1 In his evidence Mr Ford¹⁰ for Horticulture New Zealand sets out an alternative regime for managing the nutrient losses from horticulture operations. He offers an alternative to any nitrogen leaching maximums specified in the POP for those users who are NZGAP accredited and who meet certain nitrogen input limits.

6.2 I do not agree with Mr Ford that an appropriate response to managing surface water quality is to have no controls for horticulture activities, given their *potential* for high leaching if not well managed. However, I do agree that the proposal put forward by Horticulture New Zealand at the council level hearing (which Mr Ford refers to) may be an appropriate alternative to the rule I proposed in my evidence in chief. However, as the alternative approach suggested by Mr Ford has not been set out in any detail, I am not able to fully consider the appropriateness of that approach at this time.

6.3 To be effective, the best management practice for nutrient management section of the 'Code of Practice for Commercial Vegetable Growing in the Horizons Region' would need to change from draft to operative status. The approach would also need to be supported by scientific analysis to demonstrate that the management of nutrient inputs specified in the code would actually result in nutrient losses that are consistent with the outcomes intended by the POP. Therefore, I consider that such an alternative approach, while acceptable on the preceding basis, could only proceed with Horticulture New Zealand's action and cooperation.

7. ADDITIONAL METHODS FOR MANAGING NITROGEN LEACHING

7.1 In my evidence in chief I analysed the effectiveness, efficiency, costs and benefits of four different methods for managing nitrogen ("N") leaching.¹¹ Subsequently, in his evidence in chief, Mr Willis proposes an additional method, being a hybrid of grandparenting the N losses from existing dairy farms and using a set N leaching rate for new dairy farms. Mr Hansen has also

¹⁰Mr Ford EIC paragraph 31 to 35

¹¹EIC section 2.3.4

proposed a new method, being an unspecified 'single number' N loss limit for all dairy farms (existing and new). Mr Hansen's new method includes a permitted activity rule (which is supported by Mr Hartley) if the N loss from the farm is less than X kg/N/ha/yr. I note that no figure is given for X. Mr Hansen also proposes a controlled activity rule for when the N loss is between X kg/N/ha/yr and Y kg/N/ha/yr. I note that no figure is given for Y. I further discuss Mr Hansen's proposed permitted and controlled activity rules in section 10 below.

7.2 Neither Mr Willis nor Mr Hansen has included in their evidence any analysis of the effectiveness of their proposals based on water quality outcome modelling.

7.3 Mr Willis notes¹² that modelling to demonstrate the relative effectiveness of this approach is not currently¹³ complete and will be made available in the rebuttal evidence of technical experts on behalf of Fonterra. Mr Hansen refers to FertResearch/DairyNZ records and Mr Ledgard's evidence as being the future basis for his X and Y figures. His evidence does not contain the FertResearch/Dairy NZ records and he relies on the same modelling in respect of Mr Ledgard's evidence as does Mr Willis, which is yet to be undertaken.¹⁴

7.4 As this information is not available to me, I am unable to respond to Mr Willis's or Mr Hansen's evidence, as I cannot judge the effectiveness of their proposals and, in particular, how these would give effect to the objectives and policies in the POP and the NPSFM.

7.5 On the basis that Fonterra propose to provide technical evidence to support Mr Willis's proposed approach, I would like to return to this once that further technical evidence is available.

7.6 In the meantime, I would like to provide a response to some general points raised by Mr Willis and Mr Hansen in relation to their proposals.

8. **WHAT LAND USE ACTIVITIES SHOULD BE REGULATED?**

8.1 I briefly touched on the difficulties of assuming that dairy farming is the only land use that is 'on the table' to be regulated through the POP when analysing the planning framework in my evidence in chief¹⁵. Mr Willis and Mr Hansen (and Mr Hartley) also seem to have taken this starting point (assuming that only dairy

¹²Mr Willis EIC Paragraph 173

¹³at the time of writing

¹⁴Mr Hansen EIC Paragraphs 5.6 and 12.10

¹⁵Paragraph 108, in relation to deciding which catchments require management.

farming is to be regulated). I do not consider that it is good planning practice to start an analysis from a determination that only dairy farming will be regulated through a planning framework, without firstly considering all the available evidence and options.

- 8.2 The potential effectiveness of any regime is limited in the gains that can be made if only a sub-set of the activities contributing to the problem is considered. This is noted in point 24 of the planner conferencing statement:

“All parties agree that if only some activities are regulated, that will affect what can be expected to be achieved, at the catchment level. For example, if only dairy farming is regulated than we can only expect the contribution of N from dairy farming to reduce, the contribution of other land uses could not be predicted”.

- 8.3 That statement demonstrates to me that to effectively manage land use activities contributing to the issue of degraded water quality, consideration needs to be given at the outset to how all of those contributors will be managed in an integrated manner. Starting with just a sub-set of those land use activities and then evaluating the effectiveness of that limited management approach in achieving the objective will inevitably lead to a conclusion that effectiveness will be limited.

- 8.4 This mistake has also been made by Mr Willis when assessing which catchments ought to be targeted for regulation of existing land uses¹⁶. He has applied a ‘second leg’ test for whether or not degraded catchments should be included in table 13.2, being whether ‘dairying ... is a major contributor to degraded water quality’. In my opinion, this is an incorrect approach. In order to respond to the issue (degraded water quality) and the identified cause (non-point source pollution), the appropriate tests are the ones that I have applied in my evidence in chief; that is, which catchments are degraded and of those catchments, the ones where that degradation is caused by non-point source pollution. These catchments should be targeted for management. The form of that management should follow from this initial identification and not be the deciding factor in the identification of where the problem is to be addressed.

- 8.5 I agree with Mr Willis’ evidence¹⁷ that only targeting dairy farming creates efficacy and equity issues. That is why I have taken the approach of a broader

¹⁶Mr Willis EIC paragraph 127 and 128

¹⁷Mr Willis EIC paragraph 42

consideration of land uses and catchments in my evidence in chief, and I continue to believe this is a more appropriate way to achieve integrated management of the region. I note that the NV POP regulated four land use activities; being dairy farming, intensive sheep and beef, cropping and market gardening. Therefore these four activities are 'on the table' to be considered. I understand that introducing any other land use activities maybe beyond the scope of the appeals.

- 8.6 Taking an integrated approach is also consistent with the NPSFM, particularly Objective C1 and Policy C2, as addressed in Ms Sweetman's evidence.¹⁸

9. **GRANDPARENTING APPROACH IN MR WILLIS' EVIDENCE**

- 9.1 Mr Willis' proposed rule framework "grandparents" existing farmers at their existing N leaching, where that leaching is up to and including 27kg/N/year. It then grandparents farmers above 27kg but provides for the council to impose additional nitrogen loss mitigation measures as a condition of consent. Both these occur as a controlled activity. Applications for existing farmers to increase their N leaching would be considered as a restricted discretionary activity. New dairy farming would have to meet the LUC N leaching targets set out in the NV POP. I note that in the Taupo situation, applications to exceed the cap were non-complying activities and there were strong policies re not increasing leaching beyond the cap.

- 9.2 Mr Willis identifies two other Regional Plans that control N losses from farming activities. He states this in the context of regulation of dairy farming (the title of his section). Mr Willis acknowledges that in fact both of the approaches he discusses control all rural land use (above a certain threshold) in the relevant catchments, and the grandparenting approach applies to all land uses in the catchments, not just a small subset of dairy farming. When noting the relative benefits of grandparenting over other approaches Mr Willis does not consider this important point. Mr Willis' approach does not therefore have all the apparent benefits that he discusses in his evidence. In particular, his grandparenting approach does not impose a catchment cap. As a result, total nitrogen leaching in the catchment may actually increase over time.

- 9.3 Mr Willis places a great deal of emphasis on the 'precedent' of the use of grandparenting in Lake Taupo and Rotorua Lakes examples. I do not agree that

¹⁸ Ms Sweetman EIC paragraphs 39 - 42

one case necessarily creates a precedent for others, especially when they relate to different regions, and I do not agree that what may be an appropriate planning framework for one part of a region (Lake Taupo within the Waikato Region) is necessarily an appropriate planning framework for another region. I note that, in particular, Variation 5 contains specific wording to clarify that the use of a grandparented allocation in that case does not create a precedent for its use in other cases. In that respect, Section 310 (Background and Explanation) to Variation 5 includes the following statement:

“No Precedent Effect

The Objective, Policies and implementation methods contained in Chapter 3.10 have been developed to address the decline in Lake Taupo water quality in the context of the unique set of circumstances which apply in the Lake Taupo catchment. In doing so the Waikato Regional Council does not intend to create a precedent, either direct or indirect, for any other catchments or water bodies and does not consider that any precedent is created.

Issues of water quality decline in other catchments or water bodies in the Waikato Region will be investigated by the Waikato Regional Council as the need arises. If necessary, regional plan provisions and implementation methods will be developed that are appropriate for the specific circumstances of those catchments or water bodies, following appropriate community consultation and the consideration of efficiency, effectiveness, costs and benefits as required under section 32 of the Resource Management Act.”

9.4 Also, there are significant differences between the Variation 5 example and what Mr Willis is proposing:

- (a) All land uses that leach nitrogen are covered;
- (b) As a result, a catchment cap is implemented;
- (c) A much smaller number of farms are affected (around 80 properties in the Lake Taupo catchment as I understand it), making the benchmarking exercise to establish initial N allocations a smaller exercise;
- (d) Nitrogen trading is provided for;
- (e) Activities that leach nitrogen and would result in a breach of the nitrogen cap are non-complying activities; and

(f) There is a very strong policy direction against granting consent for non-complying activities.

9.5 Bearing in mind my view that it is not necessary or desirable to follow the grandparenting example in this case, I disagree with Mr Willis' statement that the DV POP is much closer to the other approaches by (in particular) 'removing a fixed N loss limit on existing farms'. Variation 5 imposes a fixed N loss limit for farms, based on their previous N leaching. It is difficult to see how removing a N loss limit for existing farms in the way the DV POP does brings the approach into closer alignment with the Variation 5 approach.

9.6 Mr Willis also sets out some of the reasons for the hearing panels' decision in deciding on the DV POP approach and not accepting the NV POP provisions relating to LUC limits for existing farms in his paragraph 48 and states that he agrees with those reasons. The faults in the hearing panel's reasons are set out in pages 54 and 55 of Ms Barton's evidence in chief and supported by me in paragraph 208 of my evidence in chief. These same reasons apply to Mr Willis' support of that rationale.

9.7 Mr Willis places a great deal of emphasis on the fact that his approach targets the 'top' or 'worst' 25% of farms in terms of nitrogen leaching.¹⁹ This seems to be based on the evidence that this supports 'social learning' and that the upper quartile of N leaching farms have the most room for reductions. However, in drawing this conclusion, Mr Willis has not assessed the *effectiveness* of this approach. To explain, Mr Willis has not explained how only requiring N leaching reductions from the 'worst' 25% of farms will address the issue of degraded water quality. His approach might be suitable if there was evidence that the water quality problem was being caused by the 'worst' 25% of dairy farms. In fact, the evidence shows that the water quality problem is the result of cumulative impacts of all land uses, and in particular, the identified 'intensive land uses'.²⁰

9.8 Mr Willis appears to support this theory by concluding that farmers within the Region are on average leaching modestly compared to farmers in other regions, and that this means they should not be regulated in a manner which requires a reduction in that leaching.²¹ Again, this does not address the identified poor water quality issue: it is irrelevant that farmers in the Horizons Region may be leaching more or less than farmers in other regions. What is relevant is the

¹⁹Mr Willis EIC paragraph 147 - 152

²⁰EIC section 2.3.2

²¹Mr Willis EIC paragraph 68

effect of that leaching – in this region, in some catchments, that leaching is having a significant cumulative adverse effect on water quality, and the water quality in the catchments proposed to be managed is degraded. That effect needs addressing in order to maintain and enhance water quality.

- 9.9 I do not understand Mr Willis' discussion on scenario modelling set out in paragraphs 173 – 185 of his evidence. As set out in my evidence in chief, and also as set out in the ecologist's conferencing statement, the modelling undertaken by Wellington Fish and Game demonstrates that taking an integrated approach to managing land use activities with non-point source discharges will result in improvements to water quality and, therefore, is consistent with the objectives and policies. This modelling has assumed that it is likely that there would be intensification on non-intensive sheep and beef farms; however, as stated already, the integrated management and regulation of those activities that are significantly contributing to water quality degradation would result in improvements. Associate Professor Death and Dr Aussiel also address the matter of scenario modelling in their rebuttal evidence.
- 9.10 I agree with Mr Willis that an effective and efficient regime will require N leaching reductions from those able to reasonably achieve those reductions. However, I disagree that this ability is limited only to those currently leaching 27kg/N/ha/yr and over. The evidence shows that reasonable and cost effective reductions can be made on many farms, and that the LUC targets proposed in my evidence are achievable and cost effective, and will achieve meaningful progression towards the water quality objectives.
- 9.11 Mr Willis also does not provide any detailed information about the costs of his proposal. He simply states²² that options with a N leaching maximum unrelated to existing N leaching 'have the potential to be the most costly' and on this basis considers his proposal more efficient (and presumably less costly) than Ms Barton's. This conclusion ignores the fact that the basis of the LUC based allocation is closely associated with current N leaching on all but a small proportion of farms.
- 9.12 Mr Willis also states²³ that an approach that limits N losses based on something other than their historic leaching levels means that existing famers 'may be unfairly disadvantaged by having to face unanticipated and possibly unbearable

²² Mr Willis EIC paragraph 202

²³ Mr Willis EIC paragraph 52

costs.’ However, Mr Willis has not provided any evidence of the ‘unreasonable’ costs that would be faced by adopting a LUC based allocation. The evidence provided by Dr Dewes and by various witnesses for the Council in fact shows that change can be achieved at very reasonable costs, and the evidence of Dr Marsh, supported in part by the economic conferencing statement, identifies that those costs are more than balanced by economic benefits at the Regional level.

10. PERMITTED AND CONTROLLED ACTIVITY RULES PROPOSED BY MR HANSEN

10.1 As outlined in paragraph 7.1 above, Mr Hansen has proposed a permitted activity rule for dairy farming provided some unspecified N loss limits are met (referred to as X). I do not support the use of a permitted activity rule in the form Mr Hansen has put forward. The proposed permitted activity rule was considered at the planner conferencing,²⁴ where all parties agreed that there are three matters that are not adequately addressed in it, being the degree of discretion that can be applied using the OVERSEER model, the issue of cost recovery for compliance, and the need for record keeping. These are not inconsiderable hurdles. The first and third matters need to be addressed within the rule itself, and they are not adequately addressed in the version provided by Mr Hansen²⁵ (and supported by Mr Hartley). The issue of cost recovery is not something that can be addressed by the provisions of the POP, and it was agreed at conferencing that a high level of assurance of the ability to fund compliance monitoring is required and has not yet been provided.

10.2 Mr Hansen’s rule framework provided in appendix G of his evidence allows that where leaching exceeds “X” the activity can be considered as a controlled activity. This rule also allows for activities that exceed a further, higher leaching of “Y”, still being considered controlled activities, with ‘control’ reserved over ‘reasonably practicable ... measures to avoid or minimise the discharge of nitrogen from the use of land’. This means that under Mr Hansen’s proposal, all dairy farming, new or existing, can leach any amount of N, provided ‘reasonably practicable measures’ are undertaken, and such activities must be approved. Given the clearly identified problems of the phrase ‘reasonably practicable farm management practices’,²⁶ reserving control through such a wide ranging term,

²⁴Record of planner conferencing on the topic of surface water quality - non-point source discharges held on 4th and 5th April 2012

²⁵For example, the rule needs to provide for provision of farm records, methodologies for Horizons to establish the accuracy of OVERSEER inputs and correct them where necessary, and provision for changes to the nutrient management plan if farm practices changes over the course of a year.

²⁶for example Mr Willis EIC paragraph 69

makes this rule inappropriate. In particular, I consider that this rule is too vague and does not carry sufficient certainty that N leaching will be reduced or even maintained at current levels. Effectively, this rule could result in increases in water degradation caused by N leaching, which will not achieve the objective or resolve the issue.