

**IN THE ENVIRONMENT COURT
WELLINGTON REGISTRY**

**I TE KŌTI TAIAO O AOTEAROA
TE WHANGANUI-A-TARA ROHE**

UNDER	the Resource Management Act 1991
IN THE MATTER	of appeals under sch 1, cl 14(1) against the decision of Manawatū-Whanganui Regional Council on Plan Change 2 to the One Plan
BETWEEN	TE RUNANGA O RAUKAWA ENV-2021-WLG-20 NGĀTI TURANGA ENV-2021-WLG-21 ANDREW DAY ENV-2021-WLG-22 WELLINGTON FISH AND GAME COUNCIL ENV-2021-WLG-23 Appellants
AND	MANAWATŪ-WHANGANUI REGIONAL COUNCIL Respondent

**FURTHER SUPPLEMENTARY STATEMENT OF EVIDENCE OF CHRISTINE FOSTER ON
BEHALF OF MANAWATŪ-WHANGANUI REGIONAL COUNCIL**

PLANNING MATTERS

Dated: 5 February 2024


Cooper Rapley Lawyers
227-231 Broadway Avenue
PO Box 1945
Palmerston North
DX PP80001

S Johnston / A J R Sinclair
 06 353 5210
 06 356 4345
 sjohnston@crlaw.co.nz

FURTHER SUPPLEMENTARY STATEMENT OF EVIDENCE OF CHRISTINE FOSTER**A. INTRODUCTION**

- [1] My full name is Christine Anne Foster.
- [2] My experience and qualifications are set out in my statement of evidence dated 7 October 2023 (**Evidence**).
- [3] I repeat the confirmation given in my Evidence that I have read and will comply with the Code of Conduct for Expert Witnesses in the Environment Court Practice Note 2023, and that my evidence has been prepared in compliance with that Code.

B. SCOPE

- [4] This further supplementary evidence sets out responses to the Court's requests for further information in their 25 January 2024 Minute (**Minute**):
- (a) Providing information around the use and relevance of the Code of Practice for Fertiliser Management (paragraph 7 of the Minute);
 - (b) Regarding the specified reduction pathway (paragraph 11 of the Minute).
- [5] Two questions¹ about the specified reduction pathway posed to me by the Court are also addressed by Professor Horne and Dr Jolly, in relation to on-farm practicalities, for which they are the subject matter experts.

C. NUTRIENT MANAGEMENT PLANS

- [6] The Court has requested worked examples of nutrient management plans (**NMPs**), to assist with assessing the workability of the PC2 provisions.
- [7] Professor Horne and Dr Jolly have been working to prepare example NMPs for existing pastoral and CVG IFLU. However, in the time available and given their commitments to expert conferencing, they have not been able to

¹ Set out in paragraphs 11 and 12 of the 25 January 2024 Minute.

complete their drafts and I have not been able to confer with them. The example NMPs will be provided to the Court and parties as soon as they are complete. They will include specific sections addressing the information requirements associated with the alternative controlled activity pathways proposed by Horizons (the specified N leaching reduction and nitrogen risk assessment tool). The current Horizons NMP template has not yet been amended to accommodate the PC2 changes, but needs to be.

D. FERTILISER CODE OF PRACTICE

- [8] The Court has raised some questions with the Code of Practice for Fertiliser Nutrient Management, prepared by the Fertiliser Association of NZ (**the Code of Practice**) – particularly whether the booklets referenced in the Code of Practice are also intended to be incorporated into the One Plan.
- [9] The booklets referenced in the Code of Practice are free resources on the fertiliser.org.nz website. Dr Jolly explains in her Further Supplementary Statement² that the information in the booklets provides a good base (entry) level of information for fertiliser management in New Zealand, and that it is information any qualified consultant preparing a nutrient management plan is likely to already be familiar with.
- [10] My view is that these booklets are not sufficiently specific for the regulatory purposes of a plan. Some of the text is prescriptive. For example, the ‘Lime Use on New Zealand Pastoral Farms’ includes standards for aerial agricultural lime (page 27) that would meet the usual requirements as standards in a plan. However, in the main, the booklets offer guidance and explanations of geophysical and chemical processes intended to guide decision making for a range of different farm practices and farm circumstances, rather than prescriptive standards. It is my opinion that they should not be, and do not need to be, individually included by reference in the plan.

² Further Supplementary Statement of Evidence of Anne-Maree Jolly (5 February 2024), at Part D.

- [11] The requirement for a NMP to comply with the Code of Practice arises from the original One Plan. The particular focus of Table 14.2 is nitrogen. The Code of Practice is particularly relevant for evaluating sources of, and management of, nitrogen nutrients. However, nitrogen is not the sole contaminant of interest in the original One Plan provisions (or in PC2). In particular, RPS Policy 5-8 clauses (b) and (c) require consideration of faecal contamination and sediment. The original One Plan definition of NMP requires that all sources of nutrients are taken into account in the NMP. DV-PC2 added clause (d) to RPS Policy 5-8 (requiring that GMPs address nutrient leaching and run-off, faecal contamination and sediment losses). DV-PC2 also proposed Policy 14-6 (b), requiring implementation of GMP, and additional measures where necessary, to manage nutrient leaching and run-off, faecal contamination and sediment loss as part of any IFLU. I note that the Code of Practice also addresses other nutrients and sources of contaminant.
- [12] The Code of Practice does not set out a prescriptive format that a NMP must comply with. Horizons created its own template NMP, incorporating the relevant elements of the Code of Practice. As I understand it, completion of the Horizons NMP template is considered by Horizons to meet the requirement in the definition of NMP to be 'in accordance with' the Code of Practice. Horizons' template NMP also includes additional contaminant sources and farm management practices not specifically addressed in the Code of Practice.
- [13] At the time PC2 was being prepared, the relevant Code of Practice was a 2007 version. Submissions on PC2³ requested that the reference to the Code of Practice be amended to the most recent Code. Since PC2 was publicly notified, there have been two later versions of the Code of Practice released (2013 and 2023). My latest proposed provisions refer to the most recent (2023) edition.

³ For example, submission point 54.1 by Environmental Defence Society Incorporated, 55.2 by Wellington Fish and Game, 61.17 by the Director General of Conservation, and 72.11 by Ballance Agri-Nutrients Limited.

- [14] As explained in my Evidence, PC2 was intended to address a specific identified problem in the One Plan framework. The relevance of the Code of Practice was not particularly questioned and PC2 was not intended to unsettle elements of the IFLU consenting process unnecessarily. Therefore, the requirement to prepare NMPs in accordance with the Code of Practice has been retained (and was not challenged by submitters other than in respect of changing the referenced document to the most recent version). As an unchanged element of the One Plan (other than in respect of the version date) no specific s 32AA analysis of the Code of Practice (or the related booklets and documents) has been undertaken.
- [15] I note that the Code of Practice will likely assume less direct relevance to PC2 as farmers begin to prepare their freshwater farm plans under Part 9A of the RMA.⁴ In response to requests made in submission points⁵ requesting that the reference to NMP be changed to 'farm environment plan), DV-PC2 amended the definition of NMP to recognise that it could be a component of a freshwater farm plan prepared for the purposes of Part 9A of the Act. At the time of preparing the s 42A report, the Act had been amended to introduce the part 9A requirements for freshwater farm plans (**FFP**). Although the content and requirements had not been detailed at that time, I understood that it was likely that FFPs would be required to explicitly address nutrient management and include an NMP. My view was that PC2 should be aligned with and accommodate Part 9A FFPs. I do not understand any party to have opposed these amendments to the definition of NMP.

Role of GMP in NMP

- [16] One of the important features of PC2 (as notified), DV-PC2 and AV-PC2 is the focus on requiring IFLU to account for all sources of contaminant and to demonstrate (through GMPs and other measures detailed in NMPs) real reductions in contaminants including N leaching loss. In my s 42A report to

⁴ The DV-PC2 provisions (and later versions) provide that a NMP may be prepared as part of a certified freshwater farm plan, rather than as a standalone plan using the Code of Practice.

⁵ Submission points 67.14, 68.14 and 70.14 by Ngāti Turanga, Te Roopū Taiao o Ngāti Whakatere Trust and Te Rūnanga o Raukawa.

the Council Hearing, I recommended the inclusion of reserved matter (b) in Rule 14-1, to explicitly address this point:

Control is reserved over:

(a) the contents, implementation and review of the *nutrient management plan** for the land[^]

(b) ~~compliance with the cumulative nitrogen leaching maximum* specified in Table 14.2~~ the nitrogen leaching loss from the land[^] and the *good management practices**, best management practice (and additional measures where necessary) to limit nitrogen leaching loss from the land[^] and to avoid, remedy or mitigate nutrient leaching and run-off, faecal contamination and sediment losses from the land[^].

- [17] However, evidence to the hearing pointed out the potential for reserved matter (b) to require additional measures over and above those necessary to demonstrate compliance with either Table 14.2 or the specified reduction. I accepted this point and amended my recommendation, in my Supplementary s 42A Report dated 8 October 2020, to read:

(b) ~~compliance with the cumulative nitrogen leaching maximum* specified in Table 14.2~~ the nitrogen leaching loss from the land[^] and the *good management practices** and *best management practices** (and additional measures where necessary) to limit nitrogen leaching loss from the land[^] to the rate specified in condition (c) and to avoid, remedy or mitigate nutrient leaching and run-off, faecal contamination and sediment losses from the land[^].

- [18] This suggested wording was adopted in DV-PC2. At expert conferencing by the planners involved in January and February 2023, all planners agreed to delete this clause. My recollection is that this was on the basis that the requirements of clause (a) already captured all of the elements of the intention and the requirement in condition (d) of the rule to demonstrate compliance with the relevant consent pathway also captured the intention. It was also considered that the detailed wording was not required if the rule was focused on addressing risk. The relevant point is that the intention of

the One Plan, PC2, DV-PC2 and AV-PC2 is that IFLU applicants are required to identify, address and demonstrate how all relevant contaminants will be reduced. This is to be demonstrated through the NMP.

- [19] For the purposes of the NMP, whatever model is used to assess the risk of N loss, it must also be capable of identifying the relevant N loss risk factors and assessing the potential impact of those at farm scale. Professor Horne and Dr Jolly, in their Evidence (reiterated in their Further Supplementary Statements) consider that the NRAT is a modelling tool that is fit for this purpose.

Specified Reduction Pathway

- [20] Professor Horne and Dr Jolly address the farm system aspects of the Court's questions at paragraphs [11] and [12] of the Court's Minute. I have had the opportunity to review their supplementary statements in preparing my evidence. From a planning perspective I note the following.
- [21] The opinions of Professor Horne and Dr Jolly⁶ are that, although there are modelling alternatives to Overseer, these are not practically able to be applied at farm scale as required by the One Plan.
- [22] Dr Jolly's opinion is that, while CVG growers have some reservations about Overseer, it is the tool most likely to be used for modelling nitrogen baselines under DV-PC2. Dr Jolly also notes the limited availability of alternative models, aside from something like the Horizons NRAT.
- [23] Professor Horne highlights the reality that the only model taught to farming practitioners in New Zealand is Overseer. His view is that, in practical terms, Overseer is likely to be the management model used by the majority (if not all) IFLU applicants.
- [24] I note that Professor Horne and Dr Jolly conclude that, if sufficient data is not available to provide a 2012/2013 baseline for the specified reduction

⁶ Paragraphs [6]–[17] of the Further Supplementary Statement of Evidence of Professor David Horne dated 5 February 2024 and paragraphs [6]–[8] of the Further Supplementary Statement of Evidence of Dr Anne Maree Jolly dated 5 February 2024.

pathway, an IFLU application will default to a discretionary activity. I confirm that is also my understanding of the intention of the rule framework.

5 February 2024

Christine Anne Foster