

IN THE ENVIRONMENT COURT
AT WELLINGTON

ENV-2021-WLG-000020, 21, 22, 23

I MUA I TE KOOTI TAIAO O AOTEAROA
TE WHANGANUI-A-TARA ROHE

IN THE MATTER of the Resource Management Act 1991

A N D

IN THE MATTER of appeals under Clause 14 of Schedule 1 of the
Resource Management Act 1991 against the decision
of Manawatū-Whanganui Regional Council on Plan
Change 2 to the One Plan

BETWEEN TE RUNANGA O RAUKAWA

AND NGĀTI TURANGA

AND ANDREW DAY

AND WELLINGTON FISH AND GAME COUNCIL

Appellants

AND MANAWATŪ-WHANGANUI REGIONAL COUNCIL
Respondent

AND VARIOUS

Section 274 parties

STATEMENT OF REBUTTAL EVIDENCE OF MURRAY HUGH HOLDAWAY
ON BEHALF OF FEDERATED FARMERS
(Semi-retired dairy farmer and Federated Farmers Manawatū-Rangitikei
Vice President)
13 November 2023



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STATEMENT OF REBUTTAL EVIDENCE OF MURRAY HUGH HOLDAWAY

Introduction

1. My full name is Murray Hugh Holdaway. While I am in the process of trying to sell my farm (and hence I refer to myself as a “semi-retired dairy farmer”), I am the fifth generation of my family to farm in the Tararua (having taken over the family farm at Ballance in 1979).
2. I am the immediate past president of Manawatū-Rangitikei Federated Farmers, and the current Vice President, I am the Chair of the Manawatū Rangitikei Rural and Family Support Trust, and Chair of the Horizons Region Rural Co-ordination Group (a group with the aim of co-ordinating the rural readiness, response and recovery from adverse events).
3. In my statement of evidence dated 13 October 2023, I set out the impacts of being unconsented on the dairy farms impacted by Plan Change 2 (**PC2**) and the reasons Federated Farmers (and I personally) support Manawatū-Whanganui Regional Council’s (**Council’s**) amendments to the alternative controlled activity pathway.
4. The purpose of this statement of rebuttal evidence is to respond to:
 - a. Comments by Mr Day about the timeframes for meeting Cumulative Nitrogen Leaching Maximums (**CNLMs**) and Federated Farmers’ position on allocation and Land Use Capability (**LUC**).
 - b. Comments by Mr Mackay about the ability of farms to achieve the CNLMs in Table 14.2.
 - c. A comment by Mr Scott that a buyer will likely require an Overseer assessment.

Timeframes for meeting CNLMs

5. At paragraph 7.1 of his evidence, Mr Day says that “Table 14.2 generously allows for twenty years to transition to lower N loss intensity businesses on top of the eleven years that have already elapsed since the original Environment Court decision.” I am not sure if Mr Day is suggesting that farms have 20 years from the date the consent is granted, but if he is then I don’t think this is correct.

6. Table 14.2 sets different N loss limits for LUC classes for year 1, year 5, year 10 and year 20. My understanding is that these years start from the dates set in Table 14.1 (with different start dates applying to different catchments). For example, in Mangapapa, year 1 would be 1 July 2014 (year 20 would be 2034) and in Manawatū above gorge, year 1 would be 1 July 2016 (year 20 would be 2036). This means that if a farmer in Mangapapa applied for consent in 2023, they would have 11 years left to achieve the 20 year target (likewise a farmer in Manawatū above gorge would have 13 years left to achieve the year 20 target).
7. My observation is that the 11 year disruption to farmers getting resource consents and getting on with mitigations has been a disadvantage to the environment. The lack of a consent pathway has created uncertainty – many farmers have not been prepared to commit in investing in environmental mitigations when it is unknown whether they will be able to continue to farm. My concern is that the 11 years we have lost has come at a cost to the environment and no one has benefitted from it. I think our focus should be on a return to regulation of these farms, in a way that creates the greatest certainty (in terms of what actions farmers need to do) and has the least administrative cost (so that resources can more wisely be spent on environmental mitigations).

Federated Farmers' position on Table 14.2, allocation and LUC

8. At paragraph 7.3 of his evidence, Mr Day says that “FF continues to remain silent on how much resource is available to allocate to other unconsented land uses within the regulated catchments as a result of their preferred allocation framework.” Allocation of resources, particularly discharges of contaminants to water, is not an easy topic because everyone has a different view and discussions about allocation tend to pit land use against land use (especially where resources are overallocated). While I can't provide a definitive answer for Mr Day, I wanted to provide some context for the position Federated Farmers has taken in PC2 and why it has not engaged in the debate about allocation, natural capital or LUC.

Federated Farmers' approach to PC2

9. During the Council level hearing, Federated Farmers' national president at the time (Andrew Hoggard), provided evidence about Federated Farmers' views on the One Plan and LUC, as well as the reasons Federated Farmers sought amendments to PC2 to ensure that it was implementable and would reduce unnecessary cost and uncertainty.
10. Due to the very narrow scope of PC2 (focusing on a workable consenting pathway for existing, unconsented intensive farming land uses), Federated Farmers' engagement in PC2 has focused on the controlled activity consenting pathway and Federated Farmers has tried not to get involved in discussions about the allocation of nitrogen or the use of LUC to allocate nitrogen.
11. In respect of allocation more generally, Federated Farmers' greatest concern is that there is currently no reliable tool available to allocate diffuse discharges of nitrogen (or phosphorous, sediment and *E. coli*). Conversations about allocation would need to consider water quality holistically in terms of all land uses and contaminants contributing to water quality issues. Also, there needs to be a robust community process where all the issues and data (including economic and social analysis) can be debated.

Oranga Wai community consultation

12. On 9 November 2023, I attended a meeting at the Woodville Racing Club (in Tararua) that was organised by Council as part of its "water targets roadshow" for Oranga Wai (the plan change being developed to give effect to the National Policy Statement for Freshwater Management 2020). Senior staff and elected representatives were there for Council (including Michael McCartney, CEO, and Rachel Keedwell, Chair), and it was attended by about 70-80 people from the local community (including farmers).
13. The presentation consisted of maps of the Manawatū catchment showing where current mitigations are likely to achieve draft targets, where current mitigations will possibly achieve draft targets, where current mitigations

are insufficient and some further work is required, and finally where current mitigations are insufficient and significant further work is required.

14. For nitrogen and phosphorus, large reductions are required for the whole catchment, and current mitigation effectiveness is insufficient to achieve these reductions for the majority of the catchment. A draft vision included 2055 as the timeframe to achieve the targets to the fullest extent possible.
15. The main response from the audience was that the December 2024 deadline (for notification of the Oranga Wai plan change) should be extended so that the community has time to consider the implications of the proposals (including the social and economic impacts).
16. In respect of Mr Day's comments about allocation, I think that it is this kind of community consultation and debate that would need to happen to properly consider allocation (once tools are available and there is better information – it needs to be informed consultation/debate). It is also not just about the dairy industry, but about all land uses. At the 9 November 2023 meeting there were a lot of hill country farmers from the coast present (it was good to see some younger guys who don't normally turn up at these kinds of meetings). They were vocal about their concerns and the possible implications for them. I think this kind of participation and debate is important – we are all part of the problem and need to all be part of the solution. This is also one of the issues with the One Plan (and Table 14.2) – it is only dealing with one part of the problem and was therefore never likely to solve the water quality problems.

Everyone should be contributing

17. I am not sure if Mr Day's position is that farms that already meet the CNLMs in Table 14.2 should also be subject to scrutiny to ensure they are also "doing the right thing" (in terms of not adopting poor practices). Federated Farmers' position is that all farms should be required to adopt good management practices, irrespective of whether they comply with Table 14.2 or the new risk matrix that is proposed in Council's plan provisions.
18. I have a strong personal view that all farms should be looking for ways to mitigate nitrogen and phosphorus loss, no matter where they are on tables

or matrices. My farm is not in a targeted catchment and there are currently no restrictions in the regional plan that apply to the nitrogen loss from my farm (although there are now restrictions in the National Environmental Standards for Freshwater, such as the nitrogen fertiliser cap). However, I am still looking for every way I can to mitigate nutrient loss.

19. As explained below, we were an early adopter of eco-N nitrate inhibitors (until they were banned). We were one of the first farms to participate in DairyNZ's plantain trials and we have done a range of other things such as install an eco irrigation system, close down one creek crossing and bridge another, fence all our waterways and recycle some of the dairy shed water. We are careful with our nitrogen fertiliser application (using feed budgets, lower rates of nitrogen fertiliser and targeting the timing of applications). In all our farm management decisions, the likely impact on the environment now plays a part in our thinking.
20. As part of the plantain trial, we were monitored by DairyNZ and held field days on our farm. This was as part of DairyNZ's Tararua Plantain Project which has now been subsumed as part of DairyNZ's national plantain project.
21. It has been informative and interesting to be involved in an innovative project, but plantain itself is not without challenges and is no silver bullet. One of the biggest challenges is getting plantain consistently in the grass sward across the farm. As an annual plant, plantain is not very persistent so it is difficult to maintain a higher percentage in the grass sward and in a cow's diet.
22. When we renew our summer crop, we resow it with a pasture mix which includes plantain. We have a milking platform of 150ha and do a 10ha summer crop each year. Within the first year of sowing plantain, it is present in 20-30% of the autumn grass sward. However, it then dwindles over the next 3-4 years. We have also spread plantain in existing pastures i.e. over sow.
23. At the moment, the science around plantain is on the animal impact i.e. the reduction in nitrate in urine as a result of plantain in a cow's diet. This aspect has been incorporated into the Overseer model (and Dr le Miere tells me that plantain has been incorporated into the nitrogen risk

scorecard). There is also some science that suggests that plantain also has a soil aspect to it, whereby it reduces the level of nitrogen loss from below the root zone (a bit like the nitrate inhibitors did). However, this science has not yet been peer reviewed or widely accepted, and it has not been incorporated into Overseer.

24. When the Tararua plantain project first started, it was thought that if farms could get 30% plantain into the cows' diets that would result in a 20% nitrogen loss reduction (as modelled in Overseer). However, that level of plantain has proved very hard to achieve (and to maintain beyond the first year). It is now accepted that at even 5% in a cow's diet, plantain is a valuable tool for mitigating nitrogen loss.
25. In saying this, plantain is not for everyone and it won't suit every farm system.
26. The last comment I want to make on the subject of environmental mitigations and allocation is that regulation steps up over time. Farmers can't afford to stay at the bare minimum because that would mean that they will not be prepared for the next step. I think it is natural that farmers will look for ways to prepare for the next level of regulation intensity so they don't have to make massive changes all at once. However, that "regulation intensity" needs to be reasonable – the Table 14.2 CNLMs are such a stretch that I am concerned that few farmers can take that step and still have a viable farming business.
27. I would also say that I am more engaged and I have a greater understanding of regulations and the process than most, having been actively involved in the One Plan since 2008 and through my various experiences with consent processes, leadership roles and trials like plantain. However, there is no doubt in my mind that farmers want to improve over time so I am not an exception in that respect. What I would say is that I am more engaged so I act quicker than most.

Ability of farms to achieve the CNLMs in Table 14.2

28. At paragraph 5.11 of his evidence, Dr Mackay refers to Peter Taylor's evidence during the One Plan process, which was "for the majority of these farms achieving these reductions would be relatively easy."

29. I am concerned that achieving the CNLMs in Table 14.2 is likely to be difficult for many farms (even if it is updated using a more recent version of Overseer). I am very concerned that farms that cannot meet the CNLMs would be a discretionary activity (under Fish & Game's proposal) and a lot of farms could fall into this category. Concerns about the associated uncertainty, cost, effectiveness and efficiency were the motivation for Federated Farmers and DairyNZ developing an alternative controlled activity pathway in their submissions on PC2 (which ended up being adopted as the 20%/75th percentile alternative controlled activity pathway for dairy farms in the decisions version of PC2).

Role of nitrogen inhibitors

30. I am concerned about Dr Mackay's reference to Mr Taylor's evidence about the ability of farms to meet Table 14.2. At the time the One Plan was developed, it was assumed that one of the key "BMPs" (best management practices) that farmers would adopt in order to meet the CNLMs was nitrogen inhibitors. These are no longer available due to food safety concerns.
31. I gave evidence for Fonterra during the One Plan hearings. At the time, I was using eco-N, a Ravensdown product that inhibited nitrate. During the Council hearing, I remember Commissioner van Voorthuysen asking me if nitrate inhibitors work. I remember carefully thinking about this question before I responded by saying that I could see a response in terms of extra grass growth but I don't know whether it is mitigating nitrate leaching.
32. Within a couple of years of that, Fonterra had an issue sending product to Sri Lanka. Minute proportions of nitrate inhibitors were found in the product and Sri Lanka wouldn't accept it. So Fonterra had to tell his suppliers it wouldn't accept milk from farms using nitrate inhibitors and nitrate inhibitors were soon taken off the market. This was a big deal at the time because nitrate inhibitors were thought to be a game changer – they were what we all thought as going to make a big difference for achieving water quality targets.

Numbers of discretionary activity consents

33. I am concerned that if the only consenting options for farmers were to meet Table 14.2 (updated for the most recent version of Overseer) or obtain a discretionary activity consent, there could be a lot of discretionary consent applications. The actual numbers would depend on what mitigations are available to reduce nitrogen, how far farms are (using the latest version of Overseer) from the Table 14.2 numbers, and the impacts on farm profitability.
34. Based on Dr Mackay and Professor Horne's estimates of the numbers of farms that can meet (or make reductions in N loss to meet) the CNLMs in Table 14.2,¹ it could be that 30 to 39% of farms require discretionary activity consents. Dr le Miere estimates that there are 194 unconsented dairy farms.² Assuming these numbers are all correct, that would mean there could be 58 to 76 discretionary consent applications. This seems like a lot of consents for the Council to process and a very expensive (and uncertain) exercise for a lot of farmers. The thought of needing to apply for a discretionary activity consent (and the cost and complexity of that process) would also be daunting for a lot of farmers.
35. I wouldn't be surprised if the actual number of discretionary consents was higher than this because Open Country Dairy suppliers are not included in Dr le Miere's dataset,³ and there is also the possibility that, when individual farms are considered, it is more difficult to achieve nitrogen reductions (or the impacts on profitability are greater) than the experts have estimated.

Cost of discretionary consents

36. The section 32 report for PC2 estimated that the application cost for a controlled activity consent would be \$8,500, and the cost for a discretionary activity would be \$25,500 if non-notified and \$45,000 to

¹ At paragraph 5.10 of his evidence, Dr Mackay says that when Table 14.2 was originally proposed, it was estimated that 61% of farms could meet year 20 targets by adopting high to medium cost mitigations. At paragraph 42 of his evidence, Professor Horne estimates that 65 to 70% of farms could meet the recalibrated Table 14.2 by making a 0 to 10-12kgN/ha reduction.

² Statement of Evidence of Dr Paul Frederick le Miere dated 12 October 2023 at [41].

³ At paragraph 23 of his primary evidence, Mr Passey says that there are 62 Open Country Dairy supplier farms in the priority catchments, but Open Country Dairy doesn't know how many of these are unconsented.

\$55,500 if notified.⁴ This was as at July 2019 (when the section 32 report was notified). I wouldn't be surprised if costs have increased since then (it seems like almost all other costs have increased over the last few years).

37. During the time that I have been farming, I have had to obtain a variety of consents including for the effluent system, the water take for dairy shed wash down, and for bridging a creek and culverts. I think they were all controlled activity consents.
38. The water take consent is due to expire in 2031 and the effluent consent in 2033. These were both 25 year consents so it is some time ago that I applied for them and I can't remember how much they cost.
39. I recall varying the effluent consent when we bought a neighbouring property about 16 or 17 years ago. We didn't need any external consultants and applied for the consent with the help of a Council staff member so the cost was minimal, probably \$2,000 to \$4,000. Therefore, the section 32 report estimate of \$8,500 for a controlled activity consent is probably in the right ballpark.
40. My concern is that the cost to a farmer for a discretionary activity consent is likely to be over \$100,000 (once consultant costs are taken into account which are costs on top of the above estimates of application fees). I think that it is unlikely that a farmer could apply for a discretionary consent without professional help given the range of different things the PC2 policies require an applicant to demonstrate.
41. I am concerned that this money would be better spent on mitigations to improve water quality. As a farmer, I want to improve water quality but I also want to remain in business. To implement mitigations I need capital. If my limited funds need to go to Council (and consultants) to pay consent application costs, that means I will need to reduce expenditure on development, and this would impact my progress on improving efficiency and/or environmental outcomes such as water quality improvements.

⁴ Section 32 report, page 46.

42. I would also have concerns about the resources Council or the industry have to process large numbers of discretionary consents, and the inconsistency in terms of the extent of mitigations farms are required to adopt, depending on the consenting officer or advisor. And then there is the uncertainty about what those mitigations (collectively) will achieve in terms of water quality outcomes – it is likely that there would be uncertainty for farmers and the community about what PC2 would deliver.
43. For all of these reasons, I consider it important that an alternative controlled activity pathway is provided and I do not think that it is reasonable (for farmers or the wider community) to only update Table 14.2 and to require farms that cannot meet that to go through a discretionary activity pathway.

Overseer number

44. At paragraph 8.40(e) of his evidence, Mr Scott says that a buyer will likely require an Overseer assessment for transparency. I understand that Mr Scott has based this on draft evidence of Dr Dewes that he read when preparing his evidence. However, Federated Farmers staff tell me that they cannot find this comment in Dr Dewes' evidence (so I do not know if this is still Dr Dewes' view).
45. As I explain in my primary evidence, I am currently trying to sell my dairy farm. We have not been asked by any prospective purchaser to provide an Overseer number. We have provided details of the current consents for the farm and our Fonterra Farm Insights report and Tiaki farm plan. I believe the farming sector has lost confidence in the Overseer model based on how it has been misused in the past.
46. However, even if a purchaser asked us for an Overseer budget for our farm, this is very different from a regulatory obligation to use Overseer to model nitrogen loss and demonstrate compliance with a nitrogen limit in a plan.
47. If we were using Overseer to meet regulatory requirements, there would be a lot riding on it. We could be prosecuted for not meeting our Overseer number. The mitigations we have adopt on farm (and therefore the costs we incur) would depend on the Overseer number and how accurate it is.

If Overseer overestimated our nitrogen loss, we could end up spending a lot of money on mitigations that were not necessary and, worst case, we could end up with a business that was no longer viable.

48. While the focus of much of my rebuttal evidence has been on concerns about the numbers of farmers that cannot comply with a recalibrated Table 14.2, and why there needs to be an alternative controlled activity pathway, I also consider that the alternative controlled activity pathway is very important because it does not require the use of Overseer. I am worried about the risks and potential problems if the only controlled activity pathway was one that relied solely on Overseer.
49. While I am not across the details of the Overseer peer review, the Overseer model redevelopment or the various guidance documents that the Ministry for the Environment has issued, I know that (in general terms) the advice is that Overseer should not be used to require absolute changes in nitrogen loss and Councils should consider all available information and be careful not to rely only on Overseer.
50. Therefore, I support the proposed alternative controlled activity pathway in the Council's provisions that provides for an alternative to the use of Overseer.

M Holdaway

13 November 2023