

8 March 2017

020-11-09/1

17021407

Chief Executive
401 Grey Street
Private Bag 3038
Waikato Mail Centre
Hamilton 3240

Dear Vaughan

SUBMISSION ON PROPOSED HEALTHY RIVERS PLAN CHANGE (PC1) TO THE WAIKATO REGIONAL PLAN

Waipa District Council appreciates the opportunity of being involved in the preparation of the Healthy Rivers Plan Change (PC1) to the Waikato Regional Plan. Please find attached a signed copy of our submission which will be submitted electronically on 8 March 2017.

The Regional Council staff are welcome to make contact with Waipa District Council with regards to any of the points made in our submission. In this regard and in the first instance David Totman can be contacted either via email at david.totman@waipadc.govt.nz or telephone at 07 872 0048.

Yours sincerely



Jim Mylchreest
MAYOR

Attachment: Waipa District Council Submission on Healthy Rivers Plan Change

Healthy Rivers Plan Change Submission

Introduction

Background

1. Waipa District Council ('Council') welcomes the opportunity to make a submission on Plan Change 1 ('PC1'). It acknowledges the significant and innovative work undertaken by the Regional Council and stakeholders through the Collaborative Stakeholder Group ('CSG') to develop the plan change.
2. This preamble forms part of the Council's submission as it provides a broad outline of key issues and concerns for the Council and assists in understanding the individual submission points that are attached in Form 5. Those submission points, as far as practicable, include details of the decisions sought on the individual points. In most cases it has been possible to provide replacement provisions or specific amendments. However given the complexity and untried nature of some of the provisions, in some cases the submission describes the nature of the amendments sought. The Council would welcome the opportunity to work with Regional Council staff and other submitters to develop specific wording within the scope of those requests.

Support

3. Waipa District Council supports the key high level objectives and policies of PC1 because they will be the first step towards achieving the Vision and Strategy for the Waikato River which is the overarching document driving many of the regions high level policies such as the Waikato Regional Policy Statement.
4. Waipa District Council also acknowledges the alignment of Plan Change 1 (PC1) with the Future Proof Strategy principles of protecting the natural environments, landscapes and heritage and healthy Waikato River at the heart of region's identity and having a settlement pattern that avoids negative impacts on the Waikato and Waipa Rivers.
5. While it is the Council's view that PC1 helps to give practical effect to the Vision and Strategy, the Council is concerned about the practicality of implementing PC1 and therefore the focus of the Council's submission is on implementation.

Rule Drafting

6. The Council is concerned with the overall drafting and structure of the rules. Particular issues are:
 - inconsistencies and lack of integration with the Operative Regional Plan, which PC1 forms part of.
 - the use of subjective and uncertain language such as 'appropriate', 'short term' and 'considers' in rules that require specific and measurable standards or conditions.
 - inconsistent use of 'standards and terms' and 'conditions' for different resource consent categories.

- use of tables such as Table 3.11-1 which sets numerical targets without sufficient explanation or context.
 - internal inconsistencies in the fencing and stock exclusion rules.
 - excessive use of cross referencing to schedules which are key aspects of determining compliance.
 - confusion over whether the rules apply on a 'property' or 'enterprise' basis.
7. These and other drafting issues lead to uncertainty for Plan users and Regional Council staff administering and enforcing the rules. The test that should be able to be met by a farm operator is that they should be able to understand from reading the rules what type of resource consent they need for their farm (if any) and broadly what they need to do to achieve compliance. Without this degree of clarity compliance and administration costs may be excessive with many opportunities for legal challenges. Currently it is questionable whether PC1 can be implemented.

Nitrogen Management

8. Much of the focus of PC1 is on limiting and managing nitrogen discharges. Waipa District Council encourages the Regional Council to ensure that the implementation of the plan change remains evidence and science based in the interests of achieving the water quality improvements sought in the plan change's objectives.
9. The Council has concerns regarding the principle of using modelled numerical values of Nitrogen discharges via the *Overseer* model to determine resource consent status and compliance with standards. It is understood that *Overseer* was designed as an assessment tool rather than as a legally enforceable standard. A numerical model is subject to many unknowns beyond the control of users and the Regional Council. Because *Overseer* determines numerical standards to be met for ongoing compliance with the NRP it will need to be rerun for any land use change and possibly more frequently to demonstrate compliance. The costs, benefits and risks of using *Overseer* in this way need to be considered in more detail.
10. The dates by which to calculate NRP's and prepare Farm Environment Plans seem unrealistic given the likely timeframe of 2-3 years before PC1 becomes operative. Amendments as a result of decisions on submissions may have changed the relevant rules during that time. It would be more realistic to set the period to undertake actions from a milestone in the PC1 process, such as the date decisions are made by the Regional Council or the date it is made operative.
11. An alternative approach to nitrogen management would be to place more emphasis on the Farm Environment Plans and use the NRP as an input to them.

Land Use Change

12. The Council is concerned that the non-complying activity status for land use intensification is too conservative and will have unintended consequences. An effects based approach more consistent with the RMA would be to allow intensification where contaminant discharges are maintained, reduced or otherwise appropriately mitigated. The non-complying activity status is inconsistent with this approach as it essentially assumes that consent is inappropriate and will only be granted in exceptional circumstances. A discretionary activity status based on strict criteria would be a better fit with the RMA and the policies and objectives of PC1.

13. In addition the land use intensification rule is unclear what action will 'trigger' the need for a consent, such as where a mix of land use changes take place on a single farm. There is also no provision in the rule that encourages lower intensity land use changes such as forestry planting or pasture retirement.

Partial Withdrawal

14. On 22 November 2016 Waikato Regional Council withdrew part of PC1 to enable consultation with Hauraki iwi to be completed. This partial withdrawal has created confusion and uncertainty for submitters as it has been unclear what the implications of it will be.
15. It would be helpful for the Regional Council to keep its key stakeholders informed of progress and proposals for the withdrawn section of PC1.

Equity and Implementation

16. With the widely spread benefits and public good of improved water quality that PC1 will bring, there is a case for the Regional Council (as it has in the past) to consider forms of assistance to rural landowners to help balance inequities in bearing the economic costs of the plan change.

Proposed Waikato Regional Plan Change 1 – Waikato and Waipa River Catchments.

Submission form on publicly notified – Proposed
Waikato Regional Plan Change 1 – Waikato and
Waipa River Catchments.

SubForm	PC12016	COVER SHEET	
FOR OFFICE USE ONLY			
		Submission Number	
Entered		Initials	
File Ref		Sheet 1 of	

FORM 5 Clause 6 of First Schedule, Resource Management Act 1991

SUBMISSIONS CAN BE33	
Mailed to	Chief Executive, 401 Grey Street, Private Bag 3038, Waikato Mail Centre, Hamilton 3240
Delivered to	Waikato Regional Council, 401 Grey Street, Hamilton East, Hamilton
Faxed to	(07) 859 0998 <i>Please Note: if you fax your submission, please post or deliver a copy to one of the above addresses</i>
Emailed to	healthyrivers@waikatoregion.govt.nz <i>Please Note: Submissions received my email must contain full contact details. We also request you send us a signed original by post or courier.</i>
Online at	www.waikatoregion.govt.nz/healthyrivers
We need to receive your submission by 5pm, 8 March 2017.	

YOUR NAME AND CONTACT DETAILS		
Full name: Waipa District Council		
Full address: 101 Bank St, Private Bag 2402, Te Awamutu 3840		
Email: Garry.Dyet@waipadc.govt.nz	Phone: 07 8720030	Fax: 07 8720033

ADDRESS FOR SERVICE OF SUBMITTER		
Full name: as above		
Address for service of person making submission		
Email	Phone	Fax

TRADE COMPETITION AND ADVERSE EFFECTS (select appropriate)
<input type="checkbox"/> I could / <input checked="" type="checkbox"/> could not gain an advantage in trade competition through this submission.
<input type="checkbox"/> I am / <input type="checkbox"/> am not directly affected by an effect of the subject matter of the submission that: (a) adversely effects the environment, and (b) does not relate to the trade competition or the effects of trade competition. Delete entire paragraph if you could not gain an advantage in trade competition through this submission.

THE SPECIFIC PROVISIONS OF PROPOSED PLAN CHANGE 1 THAT MY SUBMISSION RELATES TO

*Please state the provision, map or page number e.g. Objective 4 or Rule 3.11.5.1
(continue on separate sheet(s) if necessary.)*

See attached.

I SUPPORT OR OPPOSE THE ABOVE PROVISION/S

(select as appropriate and continue on separate sheet(s) if necessary.)

- Support the above provisions
- Support the above provision with amendments
- Oppose the above provisions

See attached

MY SUBMISSION IS THAT

*Tell us the reasons why you support or oppose or wish to have the specific provisions amended.
(Please continue on separate sheet(s) if necessary.)*

See attached.

I SEEK THE FOLLOWING DECISION BY COUNCIL

(select as appropriate and continue on separate sheet(s) if necessary.)

- Accept the above provision
- Accept the above provision with amendments as outlined below
- Decline the above provision
- If not declined, then amend the above provision as outlined below

See attached

Amend as follows:

Additional sheet to assist in making a submission

Section number of the Plan Change	Support /Oppose	Submission	Decision sought
Please refer to title and page numbers used in the plan change document	Indicate whether you support or oppose the provision.	State in summary the nature of your submission and the reasons for it.	State clearly the decision and/or suggested changes you want Council to make on the provision.
3.11.2 Objectives 1 and 2 Page 27	Support	This submission supports Objectives 1 and 2 as they encapsulate the overall purpose of the Plan Change which is supported.	Retain Objectives 1 and 2.
3.11.2 Objective 3 Page 27	Support with amendments	The reference to 'short term' in Objective 3 is uncertain as there is no definition of short term in the plan change and it means different things to different people. This will make it difficult to accurately assess proposals against the objective. The explanation below Objective 3 refers to actions being implemented by 2026, suggesting that short term means by 2026. On that basis it is logical to include 2026 in the objective itself.	Amend Objective 3 to read; <i>'Short term Improvements to water (ie. By 2026).....'</i>
3.11.3 Policy 6 Restricting Land Use Change Page 32	Oppose in part	Policy 6 appears to be aimed at rural land use change, as set out in Rule 3.11.5.7, but is written in such a way that it inadvertently applies to all land use change, including urban land use change. In that respect it is potentially inconsistent with Policies 10, 11 and 12 which recognise the significance of urban infrastructure and discharges and acknowledges that such discharges could increase.	Amend Policy 6 so that the first sentence reads as follows: <i>'Except as provided for in Policies <u>10, 11, 12</u> and 16, land use change consent applications that demonstrate an increase in the diffuse discharge of nitrogen, phosphorus, sediment or microbial pathogens, will generally not be granted'.</i>
3.11.3 Policies 10, 11, 12 and 13 Pages 33-34	Support	Policies 10-13 are supported as they acknowledge the regionally significant role of some point source discharges, including those associated with community infrastructure operated by local authorities.	Retain Policies 10, 11, 12 and 13.

<p>3.11.4.6 Funding and Implementation Page 37</p>	<p>Oppose in part</p>	<p>Plan Change 1 has wide ranging implications for land use, particularly rural land use within the catchments. The compliance and administration costs are high. More specific details are needed on support and implementation to ensure the affected communities adjust to the new regime efficiently and effectively. Territorial authorities, with their responsibilities for land use and environmental management are key partners in ensuring the provisions are worked out effectively. The Plan Change 1 provisions are new and untested in the Waikato and many of the cost burdens of implementation and compliance will fall on individual rural landholders rather than being spread across the wider regional community. Therefore it is important that additional effort is made to communicate and educate people about the long term purpose of the policies. Information needs to be shared between the regional council and territorial authorities to ensure affected landowners are well informed, as territorial authorities are usually the principal source of property information for land users and property and business purchasers. Consideration should be given to placing relevant PC1 information on LIM reports.</p>	<p>Add the following to 3.11.4.6:</p> <p><u>'c. Provide sufficient staff and financial resources to work with territorial authorities within the catchments to ensure consistent and coordinated information and implementation is available to landowners and community engagement is undertaken to ensure the purposes are well understood by the community.</u></p> <p><u>d. Investigate methods of providing PC1 information on LIM reports</u></p>
<p>3.11.5 Rules Pages 39-45</p>	<p>Oppose in part</p>	<p>The rules include dates by which certain actions are required, including property registration, preparation of FEPs and calculation of NRPs. Given the likely 2-3 year time frame to complete the RMA Schedule 1 process, the dates are unrealistic and should be removed and instead timeframes set based on a reasonable time from PC1 becoming operative.</p>	<p>Amend the dates required for property registration, preparation of FEPs and calculation of NRPs so that a reasonable time is allowed following PC1 becoming operative.</p>
<p>3.11.5 Rules 3.11.5.1 to 3.11.5.7: References to property and enterprise Pages 39-45</p>	<p>Oppose in part</p>	<p>It is unclear how PC1 deals with changes in property boundaries and the land areas covered by enterprises. Generally land use rules need to apply to a clearly defined property because land use consents run with the land (unless otherwise provided in a consent). However, an 'enterprise' is defined as a mix of parcels of land (properties) and an operating unit or business. It is not clear how changes through subdivision, amalgamation or leases are to be addressed, nor changes in enterprises.</p>	<p>Amend the rules to make clear how changes in property boundaries and lease arrangements with properties and enterprises will affect compliance with rules.</p>

<p>3.11.5 Rules 3.11.5.2 and 3.11.5.3 Permitted Activity Rules Pages 40-41</p>	<p>Oppose in Part</p>	<p>Rule 3.11.5.3 includes permitted activity conditions requiring both calculation of a NRP and preparation of a Farm Environment Plan. However, the rule does not require the farm to operate in accordance with the NRP, only in accordance with the 'actions and time-frames' in the FEP. Those refer to the NRP but do not specifically require compliance with the NRP.</p> <p>Rule 3.11.5.2 requires compliance with the NRP (for properties over 20ha).</p> <p>These provisions create confusion as to whether the NRP is a numerical value to be complied with, or is a tool to inform mitigation measures.</p> <p>The NRP is a property-specific numerical value derived using the software package <i>Overseer</i> which is used to estimate nutrient losses. However, it is not suitable as a Plan standard or condition to be complied with because it is subject to change as a result of external factors. These include changes in the <i>Overseer</i> model as it is updated over time and its sensitivity to different data inputs. As a result it does not meet the test of certainty required of a permitted activity rule. Clause 30 of Schedule 1 to the RMA sets out the requirements for 'written material' to be included in a Plan. Although <i>Overseer</i> is not 'written material' a similar approach could be applied, and again it would not meet the relevant test. The technical document 'Using <i>Overseer</i> in Regulation', also recommends against using it for permitted activity thresholds. An NRP would be more suited to being used as part of a Farm Environment Plan to inform the actions in it.</p>	<p>Delete the provisions in Rules 3.11.5.2 and 3.11.5.3 and any other rules specifying a property or enterprise specific NRP be calculated and not exceeded.</p>
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<p>3.11.5 Rules 3.11.5.4, 3.11.5.5, 3.11.5.6 and 3.11.5.7 Offset Mitigation Pages 42-45</p>	<p>Oppose in part</p>	<p>These controlled activity, restricted discretionary and non-complying activity rules include a range of Matters of Control, Standards and Terms and matters of discretion. These matters do not include reference to offset mitigation although it is a widely accepted option to be considered where residual effects cannot be avoided or mitigated on-site. Offset mitigation is acknowledged as an appropriate method in Policy 11 relating to point source discharges.</p>	<p>Include in each of Rules 3.11.5.4, 3.11.5.5, 3.11.5.6 and 3.11.5.7 additional matters of control, standards and terms and matters of discretion providing for offset mitigation, generally as outlined in Policy 11. The matters should specify the offset;</p> <ul style="list-style-type: none"> • is for the same contaminant • occurs in the same sub-catchment, or if not practicable within the same Freshwater Management Unit • remains in place for the duration of the consent and is secured by consent condition
<p>Rule 3.11.5.7 Non-Complying Activity Rule – Land Use Change Page 45</p>	<p>Oppose</p>	<p>Rule 3.11.5.7 classifies land use intensification as a non-complying activity. Non-complying activities are difficult to obtain consent for and in policy terms are not seen as appropriate. This will have an outcome of ‘setting in stone’ the current land use pattern as if that is the optimal pattern for the next 10 years. It will not be responsive to technological or management changes that could reduce or hold discharges at their current levels. It also creates uncertainty as to what land can be used for by placing excessive emphasis on the current land use pattern. However the footnote to the rule states that consent would be likely to be granted if the loss of contaminants will be lower than the existing land use. This better reflects the policy position of effects based and staged methods of reducing contaminant discharges. This indicates that a discretionary activity status based on strict assessment criteria would be a more appropriate provision.</p>	<p>Replace Rule 3.11.5.7 with a rule that specifies that the land use changes listed in it are a discretionary activity with specific criteria to measure applications against, including whether the loss of contaminants will be the same or lower than the existing land use.</p>

<p>Rule 3.11.5.7 Non-Complying Activity Rule – Land Use Change definitions Page 45</p>	<p>Oppose in part</p>	<p>Rule 3.11.5.7 specifies four land use changes that require consent under the Rule. It is unclear whether all of the land use changes intended to be captured are covered by the rule and the associated definitions. For example, it is not clear where horticulture/ viticulture fits in, or whether some forms of intensive animal rearing such as poultry, calves or pigs are intended to be captured. In addition the rule is unclear as to how mixed changes to land use are to be considered. The rule as drafted does not reflect the reality of land use change which is often a mixture of changes taking place over a period of time. For example 5ha of forest could be converted to pasture, therefore triggering the non-complying activity status, at the same time as 50ha of pasture is converted to forestry. This would create inconsistencies with the overall objectives of PC1.</p>	<p>Amend Rule 3.11.5.7 and the associated definitions to make it clear how horticulture/viticulture and intensive outdoor animal rearing are covered by the rule. Amend the rule to make it clear how it is to be administered where there is a mix of varied land use changes within the same property or enterprise.</p>
<p>Schedule A – Registration with Waikato Regional Council Page 46</p>	<p>Oppose in part</p>	<p>The registration information required is unclear and some of it is unnecessary. The requirement in clause (3) to provide proof of registration to the Regional Council is unnecessary given the registration is held by the Regional Council. The Regional Council should take responsibility to hold the registration information. The reference to legal descriptions in clause 5(b) is uncertain as the legal descriptions do not necessarily match the certificates of title. The registration information does not take into account that some of the rules refer to ‘enterprises’ and several properties or parts of properties will comprise an enterprise. It would be helpful if the registration information also captured enterprise information.</p>	<ul style="list-style-type: none"> • Delete clause (3) • Amend clause 5(b) to read <i><u>‘Legal descriptions and certificates of title (computer freehold registers) for all of the land in the property’</u></i> • Add the following after 5(f): <i><u>‘(g) If the property forms part of an enterprise provide the name of that enterprise’</u></i>

<p>Schedule C – Stock exclusion Page 50</p>	<p>Oppose in part</p>	<p>The stock exclusion rule is onerous and does not take into account the widely varying situations encountered on farms in the catchments. The benefit versus cost for fencing on high intensity farms is potentially high but the benefit versus cost for low intensity hill country farms is potentially very low. A more refined approach to stock exclusion is required. In addition there are inconsistencies between Schedule C and the rules with the fencing setback being either 3 metres or 1 metre. Schedule C is inconsistent with the stock exclusion provisions in Schedule 1 making it unclear which is to apply.</p> <p>On 23 February 2017, the Ministry for the Environment released a draft set of national stock exclusion rules. The national rules are likely to be in place before PC1 is made operative. The intent of the rules is to provide a consistent national standard for stock exclusion from waterways to be provided by national regulations. However regional councils may impose more stringent stock exclusion rules. The draft national rules are inconsistent with the Schedule C provisions, creating potential for confusion. The draft national rules take a slope-based approach and also a more refined approach to stream types and type of stock. These approaches are more appropriate and better reflect the costs and benefits of stock exclusion in the catchments than Schedule C. There is no evidence in the section 32 report or elsewhere to demonstrate that PC1 requires a more stringent approach, therefore the national regulations should be adopted in place of Schedule C.</p>	<p>Delete Schedule C and replace it with cross references to the proposed national stock exclusion regulations being produced by the Ministry for the Environment and make any necessary consequential amendments to the rules.</p>
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<p>Table 3.11-1 Water Quality Targets for the Waikato and Waipa Catchments Page 57</p>	<p>Support with amendments</p>	<p>Table 3.11-1 on page 57 is in five sections to reflect different freshwater management units. There is no number on the table, making it unclear whether it is the right table referred to in the provisions. There are also unexplained gaps in the table.</p> <p>Table 3.11-1 includes short term targets. There is no definition or explanation of what 'short term' means. This creates uncertainty for administration of the Plan. It appears from the Section 32 report that short term means by 2026. Most of the monitoring points are not widely known so it is difficult to relate them to FMUs. The water quality targets do not appear to take into account short term impacts such as flooding.</p>	<ul style="list-style-type: none"> • Include the table number (3.11-1) in the title of the table on page 57 • Include a definition of 'short term' in Table 3.11-1 as 'by 2026'. • Include a map identifying the locations of the monitoring sites in Table 3.11-1. • Include an explanation of gaps in the data in the table. • Clarify how water quality impacts of flooding are addressed in the targets.
<p>Definition – Certified Farm Nutrient Advisor Page 80</p>	<p>Oppose</p>	<p>The definition of 'Certified Farm Nutrient Advisor' is inconsistent with the definition of 'Certified Nutrient Management Advisor' contained in the Regional Plan. This is confusing and will lead to administrative difficulties as it is unclear whether they are interchangeable.</p>	<p>Rationalise the definitions of 'Certified Farm Nutrient Advisor' and 'Certified Nutrient Management Advisor' in the Regional Plan and Plan Change 1 so they are the same.</p>
<p>Definition – Farming Activities Page 81</p>	<p>Oppose</p>	<p>The definition of Farming Activities in Plan Change 1 is inconsistent with the definition of Farming Activities in the Waikato Regional Plan. This will be confusing for both Plan users and administrators. It is also unclear why crop growing that is irrigated by municipal wastewater discharges is excluded from the definition. The main difference between the definitions is the reference to 'market gardens' in the Regional Plan compared to 'commercial vegetable production' in Plan Change 1. As 'market gardens' are not defined in either, the Regional Plan definition could be amended to match the Plan Change 1 definition.</p>	<p>Rationalise the definitions of 'Farming Activities' in Plan Change 1 and the Waikato Regional Plan so that they are the same.</p>

Schedule 1: Requirements for Farm Environment Plans	Oppose in part	<p>The Farm Environment Plan (FEP) provisions are not sufficiently certain or clear. It is unclear whether they are meant to establish permitted activity thresholds or to act as a tool to determine mitigation measures to reduce or control nutrient discharges. Permitted activities must be in the form of clearly specified and measurable standards. The Farm Environment Plan provisions include references to 'assessment of risk of discharge', 'assessment of appropriate land use' and 'appropriate location of winter forage crops'. These are all subjective elements requiring professional judgement, but the FEP is a permitted activity standard by virtue of Rule 3.11.5.3. The FEP is also approved by the Certified Farm Environment Planner so the permitted activity status is delegated to a third party which is inappropriate as only the Regional Council can determine activity status. It is also inappropriate for FEPs to include discretion for the Chief Executive Officer to decide an unspecified alternative model (other than <i>Overseer</i>) can be used to determine nutrient budgets.</p>	<p>Amend Schedule 1 requirements to remove reference to 'appropriate' and other subjective provisions and replace them with specific measurable language, or amend the Farm Environment Plan provisions so that they inform mitigation measures that must be complied with, rather than set the standards themselves. Remove the reference to alternative nutrient budget models.</p>
All of the above provisions			<p>In relation to all of the above topics, any consequential and/or similar amendments to have the same effect.</p>