BEFORE COMMISSIONERS APPOINTED
BY THE WAIKATO REGIONAL COUNCIL

IN THE MATTER	of the Resource Management Act 1991
AND	
IN THE MATTER	of the First Schedule to the Act
AND	
IN THE MATTER	of Waikato Regional Plan Change 1- Waikato and Waipā River Catchments and Variation 1 to Plan Change 1
AND	
IN THE MATTER	of submissions under clause 6 First Schedule
BY	**BEEF + LAMB NEW ZEALAND LIMITED** **Submitter**

SUBMISSIONS OF COUNSEL FOR BEEF+LAMB NEW ZEALAND LIMITED FOR HEARING STREAM TWO
27 June 2019

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MAY IT PLEASE THE COMMISSIONERS:

1. Beef + Lamb New Zealand Limited (B+LNZ) submitted on all parts of Plan Change 1 and Variation 1 (together "PC1") seeking changes that, in its view, properly recognise the statutory requirements as particularised and explained in the policy documents. It said that this should be done in a way that fairly allocates nutrients while providing for flexibility and longer-term certainty.

2. B+LNZ is calling evidence on the following HS2 topics:

   (a) C1 – diffuse discharge management and use of a nitrogen reference point (NRP);

   (b) C3 – point source discharges;

   (c) C4 – stock exclusion and fencing[1];

   (d) C5 – cultivation, slope and setbacks;

   (e) Farm environment plans (FEPs).

Why PC1 matters for B+LNZ

3. As indicated at HS1 B+LNZ have poured enormous resource into this case. This is because PC1 is high stakes for the sector.

4. The decision to manage allocation based on NRP overlooks what B+LNZ say should be the key policy driver. That key driver is the inherent capability of the land to sustainably support a land use. The grandparenting of existing land uses with no regard to the characteristics of the land will have intergenerational impacts on the health and wellbeing of the Waikato and Waipā Rivers and their ability, in light of Te Mana o te Wai, to provide for the health and wellbeing of local and national communities.

5. PC1's nutrient allocation framework and controls on land use change take a binary approach to sustainable management by regulating based on existing land use. It is a simplistically attractive approach to nutrient

[1] Noting evidence was called in HS1 from Dr Dada too.

allocation and one that avoids hard decisions being made. However, B+LNZ do not accept that this approach properly achieves sustainable management because:

(a) The underlying capability (natural capital) of the land determines the scale and magnitude of environmental effects from a land use;

(b) The existing land use may not necessarily be optimal when considered against the natural capital of the land;

(c) The existing land use may not be able to respond to the need for, and the inevitability of, changes in environmental, community and market conditions.

6. Therefore B+LNZ say there are three fundamental matters that need to be examined when regulating land use:

(a) The natural character of the land;

(b) Community values;

(c) Anthropogenic activities.

7. Community values are embodied and explained through the policy framework that the decision making is subject to. Here, it includes the Vision & Strategy, NPSFM and RPS, which were addressed in HS1. The focus of the evidence in HS2 will be the relationship between natural character and anthropogenic activities and setting that in a policy and rule framework.

8. What PC1 is doing is using N allocation as a proxy for the intensity of land use, which is fixed through NRP. The intensity of land use is a feature of land management, but it is not the sole factor. There are other characteristics independent of intensity, which at its heart is an anthropocentric impact.

9. It is submitted there are two parts to land management:

(a) Anthropogenic impacts (intensity); and

(b) The natural character of the land.

10. Generally, the higher the intensity of the land use the higher the environmental risk. This means that:

- What you do;
- How you do it; and
- Where you do it;

All matter.

11. However, these matters must be informed by an understanding of the characteristics of the land. B+LNZ propose this be achieved by the use of a proxy for natural capital, land use capability (LUC) assessment. This, in turn, is managed through allocation rules, including the preparation of FEPs.

12. At HS1 the Panel sent a signal that it seeks further details of how the proposed approach to PC1 will work. The evidence presented in HS2 is designed to answer that question through detailed policies and rules to implement the objectives proposed by B+LNZ at HS1.

HS1 – the Building Blocks

13. Before the substantive parts of the HS2 case are addressed I want to remind you of B+LNZ's position on the HS1 topics.

14. B+LNZ have three main areas of concern with PC1:

(a) The need for certainty;

(b) The equitable/fair allocation of nutrients; and

(c) The need for flexibility.

15. HS1 set out the scientific basis for B+LNZ's case and explained why it was concerned about Table 3.11-1. It called evidence[2] that challenged PC1's approach to allocation and called into question the relationship

[2] See Dr Cox, Dr Chrystal, Mr Beetham and Mr Parkes in particular.

between land use and water quality. It modelled the land use change that would be required to achieve the freshwater objectives in Table 3.11-1[3] and the cost (economic and social) that the so-called initial steps required by PC1 would have upon communities[4].

16. The policy framework indicated that changes were coming but those changes are only generally signalled, making informed decision-making very difficult. It says that land use change should be signalled and assessed now so people can plan forward. B+LNZ's preference is to confront the consequences of PC1 now, which is what Dr Cox's and Mr Beetham's evidence does[5].

17. Importantly, the unique planning framework in this region created by the Vision & Strategy cannot and does not alter the sustainable management purpose of the RMA when making this plan. The Vision & Strategy, properly understood, is an expression of how to sustainably manage the Waikato and Waipā Rivers and their catchments (River). An approach that views the two parts of s 5 as separate and competing, rather than complimentary leads to an exclusive focus on water quality outcomes at the expense of other identified values, including those that recognise the relationships with the River. That is not to say no changes to those relationship are required, but the Council approach cannot be said to properly acknowledge and to the extent possible protect the relationships. The Vision & Strategy is very clear that it seeks a healthy Waikato River that sustains abundant life and prosperous communities. B+LNZ say that the latter cannot be achieved under PC1 as notified.

18. Likewise, the NPSFM and Vision & Strategy do not compete. The NPSFM is prescriptive and imposes a discipline on Councils to follow when setting freshwater objectives and its framework should be used. The Vision & Strategy is not so prescriptive and uses subtly different language, but both can be understood as expressions of s 5.

[3] Particularly without significant reductions in point source discharges.
[4] See Mr Beetham and noting that this cost was not considered in the s 32 analysis.
[5] Amongst other things Dr Cox models near total afforestation of the upper catchment and Mr Beetham tells us that the first ten years under PC1 will put hill country farmers out of business because of the low NRP (due to the extensive nature of their farming business) and increased compliance costs.

19. The intergenerational objectives are appropriate, but the Plan needs to better recognise the values being provided for as directed by the NPSFM. A clearer "line of sight" between the objectives and the values, along with the use of sub-catchment focused approaches, FEPs, recognition of natural capital and flexibility for N discharges for extensive farming systems, would lead to the freshwater objectives being achieved more quickly and in a way that does not require the degree of land use change Dr Cox has modelled.

20. Importantly, both the Vision & Strategy and NPSFM have a broader focus than water quality. Dr Mueller gave evidence that ecological health, as contemplated by the NPSFM, is broader than a numerical focus on nutrients. The same applies for the Vision & Strategy's vision for the restoration and protection of the health and wellbeing of the River.

21. In HS1 I was asked a question about the order of the words restore and protect in the Vision & Strategy. In my submission the Vision & Strategy should be ascertained from its text and in the light of its purpose[6]. As the Court of Appeal said, the meaning of legislation is not confined *to* the words of the Act, but is confined *by* them[7]. Thus, the use of the conjunctive "and" means you need to do both. However how is that achieved?

22. In *R v Kahu*[8] it was said that the courts should favour a result that will produce a workable result. This should be read alongside the direction from Burrows and Carter[9] that even if the meaning seems clear enough, the context is important.

23. There is clearly a need to restore as a (finite) process of improvement. Protect does two things, it requires things not to get any worse[10] and once restoration is complete[11] to hold the line. When viewed in the

[6] Interpretation Act 1999 s 5.
[7] *McKenzie v Attorney-General* [1992] 2 NZLR 14.
[8] [1995] 2 NZLR 3 (CA).
[9] *Statute Law in New Zealand* (5th ed, Butterworths Wellington 2015).
[10] See objective (h).
[11] This will be a "soft" point that will ebb and flow and require constant monitoring and work to manage the anthropogenic effects on the River – see objective (e) and strategy (2), (3), (9) and (11).

context of the Vision & Strategy's recognition of relationships, it is submitted that this interpretation leads to the most practicable and workable interpretation of the Vision & Strategy, nestled, as it is, alongside the NPSFM.

24. The Vision & Strategy does not require there to be a never-ending cycle of restoration, because if it did the protection function would cease more or less immediately i.e. all it would mean is that it cannot get worse than it was in c.2010. Then protection becomes superfluous, because all we are doing is restoring to, presumably, pristine[12].

25. It is submitted that there is a point where water no longer needs to be restored and only protection is required. That, in turn, begs the question of what we are restoring to and incorporates a temporal considerations into the policy analysis. The Vision & Strategy, when read as a whole, does not preclude restoration to a point. The question for you, and it is a policy one, is what is that point?

26. B+LNZ submit that it should be a point that restores the ecological health of the River to sustain abundant life and has resilience to change[13], and that once that is achieved provides for prosperous communities.

27. I note that there are several outstanding issues from HS1 that B+LNZ still wishes to comment on, notably scope. Submissions will be filed as soon as possible, but I can indicate I have had the benefit of seeing Wairareki Pastoral's submissions and I am generally in agreement with those counsel.

The NRP as Grandparenting and Why that is a Problem

28. In 2003, a Treasury Working Paper called Property Rights and Environmental Policy: A New Zealand Perspective, grandparenting was described as an "*equity issue*"[14]. It commented:

[12] I understand so-called pristine water is a fiction and not a measure favoured by ecologists.
[13] See NPSFM description of ecosystem health.
[14] Kevin Guerin *Property Rights and Environmental Policy: A New Zealand Perspective – New Zealand Treasury Working Paper 03/02* March 2003, at page 14.

> "[Grandparenting existing uses] reduces the cost of bringing in new controls but creates inequities between existing and future residents, allowing the former to shift the full burden of changes onto the latter (Fischel, 1999)."

29. At [289] of the s 42A officer's report, it is stated that grandparenting of N losses was canvassed "extensively" through the first instance and Environment Court hearing for Lake Taupo Variation 5[15]. In the 2011 decision (the final decision of the Court), the final provisions of Variation 5 are recorded. Methods 3.10.5.7 – 3.10.5.12 reflect a grandparenting approach, allowing nitrogen discharges, capped at their rate in 2011 (averaged since 2001). The "Explanation and Principal Reasons for Adopting Methods 3.10.5.1 to 3.10.5.12" records:

> "The rules ensure existing land uses are permitted or controlled (granting existing nitrogen leaching) but are locked into meeting standards ensuring no increase in nitrogen leaching. However, nitrogen offsetting has been added to the grandparenting approach to allow land use flexibility and increases in nitrogen leaching where corresponding decreases can be achieved. Development flexibility for forestry and underdeveloped land is also provided for. The ability to trade (or offset) with other landowners has also been provided for."

30. Whilst the *Carter Holt Harvey* decisions demonstrate the Environment Court favouring a grandparenting approach at that time, it is submitted it has moved on. Nowhere is that more apparent than in *Day v Manawatu-Wanganui Regional Council*[16] where the Court made the following comments:

> Other approaches to managing N loss including grandparenting tend to penalise those farming superior soils and results in sub optimal utilisation of the finite soil resource. Farmers on high quality soils may be prevented from taking advantage of the productive potential of their soils if they have been grandparented to a production level below the soil's

[15] *Carter Holt Harvey Ltd v Waikato Regional Council* Environment Court Auckland, 6 November 2008, A 123/08 and *Carter Holt Harvey Ltd v Waikato Regional Council* [2011] NZEnvC 163.
[16] [2012] NZEnvC 182

> inherent productive capacity. It favours greater utilisation of inferior soils with associated increases in inputs necessary to sustain production.[17]
>
> …
>
> Grandparenting, taken literally in the RMA context, means allowing existing operators to carry on producing current levels of effects, particularly adverse effects, and imposing restrictions only upon new entrants to whatever activity is being dealt with. It hardly need to be said that it is a concept usually favoured by existing operators, who rationalise it by pointing to the investment they have made in the activity, and claiming that it would be unfair to require them to change, (or cease in extreme cases) the way they do things.[18]
>
> …
>
> Whether the grandparenting be a hybrid or pure version, we regard it as an unattractive option. Quite apart from its inherent disadvantages of failing to provide an incentive to reduce leaching, such a process would be administratively inefficient.[19]

31. As stated in the HS1 submissions, grandparenting tends to be favoured by existing users and those with high losses. In general, the sheep and beef sector has demonstrated that its growth, resilience and adaptability is not dependent on an ever increasing environmental footprint[20]. Ms Dewes' evidence concludes that the proposed NRP and PC1 fails to recognise the need to spread the load of paying for externalities of diffuse discharges across all land users. In HS1 Dr Mueller said that NRP will not be sufficient to achieve water quality outcomes because (inter alia) it does not distinguish between land use types and the capability of land resources[21].

32. Grandparenting is no longer seen as a desirable option by the Court and should not be used to ensure the viability of a business. It is submitted that for those parties who are arguing that the NRP is appropriate on that basis then this is the complete answer.

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[17] At [5-109].
[18] At [5-128].
[19] At [5-177].
[20] See B+LNZ's HS1 evidence.
[21] Brief of Evidence of H Mueller at paragraphs 63 – 64.

33. The issues associated with grandparenting are enhanced when the flexibility sought by B+LNZ is taken into account. Locking in the NRP to historic uses for extensive farming systems means that a farmer cannot readily farm to the annual pasture/grass curve. Relying on Dr Chrystal, Ms Jordan describes farming to grass curve as:

> [M]anaging to the pasture growth curve means farmers do not specifically alter pasture growth by applying N fertiliser or bringing in large amounts of supplementary feed at times when pasture growth is low. Consequently, total stock numbers carried on an annual basis will depend on the pasture production of the particular season.[22]

34. An NRP limits the opportunities to alter livestock systems in response to the "natural rhythms of the land". While this concern relates principally to the ability to increase stock numbers, embedding this approach as part of regulatory policy creates an important mindset shift away from maintaining a constant level of production in reliance on inputs to Dr Dewes' "*sensitivity for the vulnerable landscapes they reside within*"[23].

Comments about Flexibility and Adaptability

35. As has been demonstrated through HS1, flexibility and adaptability have historically been a key reason for the sheep and beef sector's resilience. As Mr Parkes and Mr Burtt told you these characteristics are features of the sector.

36. It is submitted the need to react to change and be nimble will only increase. We can see today the speed of change increasing. Right now, we have councils declaring climate emergencies, new national policy statements under preparation and the Climate Change Response (Zero Carbon) Amendment Bill before Parliament.

37. To briefly focus on the latter for illustrative purposes, we are all aware that the biogenic methane from livestock is a fraught issue. While it is currently mostly exempted from the proposed bill, who knows what will happen come 2030 if the 10% reduction from 2017 levels currently

[22] Brief of Evidence of C Jordan 9 May 2019 at paragraph 57.
[23] See paragraphs 133 – 134.

proposed (assuming it is ultimately enacted in this form or similar) are or are not achieved.

38. There is a move away from market and local management to a more centralised command and control response. The point is that we know that environmental regulation making is gathering speed and there are changes coming.

39. Therefore, the desirability of maintaining flexibility in the Plan is elevated. This fits nicely with a regulatory approach based on the inherent capability of the land because it acknowledges that where there is head room changes can be made, while pulling back in other places.

LUC and Natural Capital

40. LUC is well established as a land management tool. Its primary function was the management of erosion through a systematic identification of the risks and opportunities the land presents. However, it is now broader than that and is a vital part of the identification of a landscape's capability for long term sustainable production and use[24].

41. Natural capital is often described as the inherent capability of the land to sustain production. Dr Mackay points to its link to ecosystem services, which are the benefits we obtain from ecosystems. Those ecosystem services are subject to the biophysical limits of the natural environment[25].

42. Dr Mackay recognises there is currently not a direct method to calculate the natural capital of soil/landscape. However, in his view a proxy for natural capital can be derived from the ability of a legume-based pasture under the pressure of a grazing animal to be sustained in a self-regulating fashion by the soil. It is self-regulating to the extent no inputs are required and N is retained for plant growth (i.e. it is not lost to groundwater). This is contemplated and provided for by the LUC worksheets used in the inventory for each LUC unit[26].

[24] See Brief of Evidence of S Stokes at paragraphs 29 – 31.
[25] See Brief of Evidence of A Mackay at paragraph 22.
[26] See paragraphs 41 – 43.

43. Ms Jordan relies on this evidence, along with that of Dr Dewes and Dr Cox (who determine a stocking rate and N leach respectively in the four FMUs for systems that are not reliant on inputs[27]), when recommending her permitted activity rule and Table X and X1, which is discussed in detail later. This leads to her key conclusion that:

> An LUC-derived threshold is directly related to the productive capacity of land, not existing land uses that may not be maximising the productive potential of the land (for a range of economic, social or cultural reasons) or operating in such a way that the rate at which the life-supporting capacity of air, water, soil and ecosystems can be safe-guarded (RMA, section 5) is exceeded.[28]

44. Dr Mueller also addresses the desirability of LUC in her evidence[29]. Her concern is the lack of evidence that a focus on a single nutrient can achieve ecological health of aquatic ecosystems and that both N and P (at least) need to be controlled. This is because different concentrations of different nutrients lead to different outcomes/effects[30]. LUC enables a holistic consideration of all contaminants because it leads to informed decision-making when determining management techniques, for instance by identifying critical source areas (CSA). Through its incorporation in FEPs it will provide for a robust stock take of a farm's natural resource and the identification and management of CSA, which will deliver sustainable and enduring outcomes in the integrated management of land and water resources[31]. The identification of CSA, in particular, will provide for the management of other contaminants of concern.

45. In its final decision on the Tukituki Catchment Proposal the Board of Inquiry said:

> The LUC system is well established and takes into account particular characteristics of the various land use classes in terms of contour, soil type and other physical characteristics. It is relatively simple and easy to follow. Finally, it has an inherent logic because it is based on the

[27] See paragraphs 131 – 136.
[28] See paragraph 49.
[29] See note 21 above.
[30] At paragraph 55.
[31] See Mr Stokes at paragraph 56.

> actual natural capital of the soils which reflects the uses that are likely to be made on the relevant land in future[32].

46. This comment nicely summarises B+LNZ's approach to LUC, with one modification. In the final sentence rather than reflecting the uses *likely* to be made of the relevant land, it may be more accurate to say the *potential uses* of the relevant land in the future.

47. The natural capital and LUC approach promoted by B+LNZ, resonates with the famous 1966 Boulding article, *The Economics of the Coming Spaceship Earth*[33]. The notion that we live on an ecologically constrained planet earth (the "spaceship economy") is ingrained in our thinking now. If Boulding was correct that the notion of limitless resources (the "cowboy economy") is a flawed way of thinking, the limits that he famously identified that constrain us should be understood before we can find our place in the "cyclical ecological system" capable of continued reproduction. In other words, we should understand what we are sustainably managing.

48. In the Horizons One Plan case before the Environment Court[34], Dr MacKay gave consistent evidence to what is set out above, which was accepted. That case was appealed to the High Court.

49. While obiter, the High Court had this to say about the merits of LUC:

> [T]he first question is, "how do you set limits?" The choice is between setting limits on the basis of the resources (and their qualities) or on the basis of the activities that occur on and within those resources. To set limits on the basis of resources and the qualities, which is what the Environment Court did is logical. Resource qualities do not readily change, whereas activities do. The fundamental unit to be managed is the resource. The Environment Court had before it evidence that the LUC classification system was a robust one for classifying the productivity of the source of resource. Drs MacKay and Douglas explain in their evidence that the LUC system is an adaptation of a United States Department of Agriculture system first published in 1961. It focuses on

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[32] See paragraph [426].
[33] Boulding, Kenneth *The Economics of the Coming Spaceship Earth*, 1966 accessed at https://pdfs.semanticscholar.org/41fa/ef2cf3d1c99fc40f396bb24cfc6943f56dfd.pdf?_ga=2.53775979.2120055159.1561179920-1589304316.1561179920 22 June 2019.
[34] *Day v Manawatu-Wanganui Regional Council* [2012] NZEnvC 182.

> the capability – or versatility – of the land to support more intensive farming … An entire farm may be treated as falling within a single unit, or the farm may be subdivided into different parts each falling within a distinct LUC class.[35]

50. In *Day* the Environment Court addressed four criticisms of LUC before ultimately coming to the conclusion that its use as a tool for allocating N was supported by the evidence and should be used as a basis for leaching limits[36]. They were:

(a) LUC classes do not determine actual or predicted amounts of N leaching - the Court correctly recognised that LUC is not a measure of N leaching. Rather it determines soil productivity and the amount of N to be leached is allocated according to the inherent soil capability, separate from land use or intensity[37].

(b) That the use of LUC was mathematically illogical – in dismissing this criticism the Court accepted the evidence of Dr Mackay that a strength of LUC is that it is not linked to current land use but the underlying land resource. It encourages more intensive land uses toward soils of higher quality, which the Court saw as an advantage of the LUC-based regime[38].

(c) That LUC is inflexible[39] - the Court dismissed this criticism because LUC only controls the allocation regime, not what technologies can be used in the future. As the productive capacity of the soil declines the available options to comply with the N discharge limits become more difficult, but that is a different thing[40].

(d) The LUC approach is inequitable – the Court dismissed this argument and agreed that it is more inequitable to allow those with high externalities to continue under the status quo because

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[35] *Horticulture New Zealand* v *Manawatu-Wanganui Regional Council* [2013] NZHC 2492 at [81].
[36] At [5-113] and [5-217].
[37] At [5-94].
[38] See [5-99] – [5-100].
[39] Expressed in the decision as "The Application of LUC Could Trap Future Generations of Farmers into a 1980's Time Warp".
[40] See [5-102].

> of a failure to recognise the inherent capability of the soils[41]. The Court goes on to note the suboptimal utilisation of the finite soil resource by grandparenting, where farmers on high quality soils may be prevented from taking advantage of their productive potential if they are grandparented to a production level below its inherent capability. This approach favours greater utilisation of inferior soils with associated increases in inputs necessary to sustain production[42].

51. In *Day* the Court also accepted Dr Dewes' evidence that depending on land class and management techniques being employed, significant N loss reductions can be made while at the same time improving farm profitability[43].

52. The position of B+LNZ is therefore that favoured by the Environment Court in *Day*. Management should be based upon the inherent capability of soils not existing land use.

53. The advantage of LUC is that, as night follows day, it improves understanding of the landscape. It imposes an obligation on land users to systematically identify the characteristics of the land by reference to the five physical factors[44], which are readily auditable by Council. It has the added comfort that it would be undertaken by professionally qualified practitioners with experience and expertise in the field. These factors allow for the management of all contaminants at an on-farm level, notwithstanding the favoured regulatory proxy for intensity is N leaching. This will be supplemented by the provision of additional parameters in the freshwater objectives at Table 3.11-1.

54. As Mr Stokes has indicated the scale of mapping in the LUC handbook and regional bulletins is insufficient to plan at an on-farm level. Finer mapping is required, which is proposed to be part of FEP[45].

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[41] See [5-105].
[42] See [5-109].
[43] At [5-169].
[44] See Brief of Evidence of Simon Stokes from paragraph 37.
[45] See below and Mr Stokes' paragraph 56.

55. I note there is a clear and obvious link between FEP and natural capital. The proposed approach of analysing the capacity of the land to support a certain land use has been unsuccessful. Instead, a process by which the character of the land is identified to better understand what needs to be done and how to maintain and use the landscape is a surer recipe for success.

56. It is important not to overstate the use of LUC in a regulatory capacity. It is only part of Council's toolbox. Its role is imposing a discipline on land users to understand land's characteristics. The reason it is so useful is because it encourages the gathering of facts and physical information to inform management decisions.

57. Criticisms that LUC was not designed as a nutrient management tool fail for similar, but different, reasons as those in respect of OVERSEER. Firstly, in terms of identification of land use suitability LUC is the best proxy we have[46]. Secondly, as has already been stated, the gathering of factual information about the physical characteristics of the land to inform farm-specific management practices must assist the assessment of the appropriate approach to land use and is undoubtedly superior to managing based on current land use. This is the major failing of the NRP because it only tangentially takes into account the physical characteristics of the land. It presumes that the selected years were being farmed in the optimal manner and consistently with the physical characteristics.

58. Several of the rebuttal briefs of evidence[47] describe B+LNZ's approach as one that permits low leaching farming activities to increase N discharges. That is an unfortunate characterisation of the B+LNZ position and overlooks the link with the productive potential of the land. The aim is flexibility to improve productivity should the inherent capability of the soils allow for it. B+LNZ recognise the need for change in order to give effect to the Vision & Strategy and to restore and protect the River. It supports a trajectory of change and does not seek to defer the hard calls to another day because of the social and economic cost.

[46] See evidence of Dr Mackay.
[47] See for example Mr le Miere.

It is submitted that we are past that point and B+LNZ responsibly recognise that there will be "pain" in order to get us back on track.

59. What B+LNZ are saying is that the best way to give effect to the Vision & Strategy and NPSFM is to recognise that some sub-catchments are not being efficiently utilised, whereas others are being used beyond their natural limits. It is the latter where the greatest changes should come from. However, where there is capacity within environmental limits (freshwater objectives) to more efficiently utilise the resource, then PC1 should not shut the door on that land use. Any such changes would need to either comply with the permitted activity rules, particularly the limits and targets in Table X and X1 or go through a resource consent process allowing them to be tested against Table 3.11-1.

FEPs

60. B+LNZ are mindful of the direction given by the Panel in respect of the FEP topics[48]. B+LNZ have dealt with those matters raised in the Officers' Report but there is some difficulty separating the rules from the schedules. This is because the content of the FEP is material to where it fits within the rule framework. The line is therefore somewhat arbitrary, but we have attempted to be as helpful as possible to ensure the Panel understands the position.

61. B+LNZ supports FEPs provided they are based on a robust inventory of the natural capital. However, FEPs can become a compliance tool for standards, effectively a tick box exercise. The risk is that rigour and thought is not applied to the preparation of the plans. On the other hand, a specific FEP allows the farmer to identify risk and prioritise actions to maintain and enhance water quality[49].

62. Dr Dewes in her evidence comments on how the best performing farmers in her experience are those who have what she calls a "*natural sensitivity for the vulnerable landscape they reside within*"[50]. They, she says, farm to the limits of their land and do not push marginal

[48] Email from the Hearings Co-Ordinator 8 April 2019.
[49] See HS2 evidence of R Parkes at paragraph 74.
[50] See paragraph 134.

landscapes into marginal land use systems. It is submitted that what Dr Dewes is demonstrating here is the importance of on-farm understanding of the land resource.

63. The way B+LNZ propose this be achieved is through LUC classifications being mapped as part of the FEP[51]. A particular scale of mapping is not required, but the intention is the words "*within the farm and the area within each LUC*" signals the need for mapping at a finer scale than that in the LUC handbook. Importantly this approach is a key way that the sub-catchment based engagement of communities is achieved.

Modelling Outcomes

64. At HS1 the Panel seemed interested in understanding what further modelling could be undertaken in order to remedy the concerns that were raised by B+LNZ. Some of that work has now been undertaken is intended to go some way to doing that.

65. Dr Cox has identified and applied alternative data to reflect the most recent and best information on land use[52]. He has updated the dairy and dry stock nutrient leaching rates (called "export coefficients" by Dr Cox) also[53]. This is data he has greater confidence in[54]. It leads to his conclusion that N attenuation in the NIWA model was underestimated because the N leaching of dairy and dry stock land uses were underestimated. This means the system works differently to what was thought and the available load of N to be allocated is greater.

66. Dr Cox goes on to explain that his latest modelling also reveals that the losses from dairy and its contribution to the total N load is shown to be higher in the HS2 model. His new Figure 2, updating the relative TN proportions should be read alongside those produced for HS1. B+LNZ is asking you to take account of these loads when considering the relative proportion that land uses (based on N loss as a proxy for intensity and risk) should contribute to the overall reductions required to

[51] See Schedule 1 at 3(c), Appendix 1 to Ms Jordan's evidence.
[52] See concerns in Brief of Evidence of T Cox 15 February 2019 (HS1) at paragraph 106.
[53] Brief of Evidence of T Cox 3 May 2019 (HS2) at paragraph 11.
[54] See paragraph 10.

provide for the restoration and protection of the health and wellbeing of the River.

67. Based on the evidence of Dr Mueller for HS1 Dr Cox was then asked to model the alternative N and P instream outcomes based on ecological health. This modelling then informs a side by side comparison of equal allocation, flexible cap and LUC class allocation approaches.

68. All three scenarios show that for instream allocation based on ecological health outcomes there is a need for significant reductions, but not so great as required under the notified Table 3.11-1 freshwater objectives. It is submitted that this evidence is important in the context of your ss 32 and 32AA analysis. The overall structure of B+LNZ's case urges you to take an approach that puts in place freshwater objectives that focus on ecological health, which will provide for people's cultural wellbeing and relationships with the River. It is submitted that an ecological health focus, as modelled in the alternative by Dr Cox, provides for the health and wellbeing of the River (e.g. swimming and food gathering) in a way that will protect those relationships as sought by the Vision & Strategy better than that in the notified version of PC1.

69. What Dr Cox ultimately shows is that the LUC class allocation approach that is proposed by B+LNZ can work for the allocation of N to achieve instream outcomes, see his Tables 9 and 10. This is done by using the weighted average stock units for each LUC class provided by Dr Mackay[55] to determine the carrying capacity of each LUC class in the four FMUs[56]. We now need to consider the results of the HS1 expert conferencing to determine whether Dr Cox's latest modelling gives you the "final" allocation or if further modelling is required. B+LNZ has not considered the conferencing outcomes fully yet and will do so in accordance with the Panel's directions.

[55] See paragraph 63 and Table 1.
[56] See from paragraph 59.

Stock Exclusion and Setbacks

70. Dr Dada, Mr Kessels[57], Mr Parkes, Mr Stokes and Ms Jordan give evidence on stock exclusion. While Mr Stokes has some doubts[58] (as do others), B+LNZ accept stock exclusion is appropriate in the flat and rolling hill country, but not in steeper hill country.

71. Ms Jordan summarises B+LNZ's position and its evidence from paragraph 153. She refers back to Dr Dada and Mr Beetham's evidence from HS1 and the efficiencies and costs of a blanket stock exclusion/fencing rule. Those costs, she records, far outweigh the benefits that would be gained based on Dr Dada's evidence. Mr Kessels says that:

> A targeted approach to a range of management and mitigation measures that also involves critical source and high ecological value area identification and management is likely to be more a more effective approach to attenuating a broader range of contaminants on hill country farms in many situations.[59]

72. B+LNZ, having considered all those matters, now seek exclusion of stock through fencing on land up to a slope of 15 degrees or where break feeding takes place. Its approach is consistent with draft recommendations from the National Government's Clean Water Consultation document and the Land and Water Forum recommendations[60] and reflects Mr Kessels evidence that on-farm management through FEP will be more effective, especially for slopes greater than 15 degrees[61].

73. In terms of setback distances from water ways it is B+LNZ's position that the most effective and efficient method to address riparian setbacks is through tailored FEP, rather than a prescriptive approach which does not account for characteristics of farms.

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[57] Both from HS1.
[58] See paragraph 78 and 80.
[59] See paragraph 53.
[60] See Ms Jordan's HS2 evidence at paragraphs 161 – 165.
[61] See paragraph 47.

Permitted Activities

74. I wish to record legal submissions on the making of permitted activity rules. These submissions will be supplemented orally to the extent necessary at the hearing.

75. Section 77A RMA grants local authorities the power to:

(a) Categorise activities as belonging to one of the classes of activities described below; and

(b) Make rules in its plan or proposed plan for each class of activity that apply –

(i) To each activity within the class; and

(ii) For the purposes of that plan or prosed plan; and

(c) Specify conditions in a plan or proposed plan, but only if the conditions relate to the matters described in section 108 or 220.

76. An activity may be classified as:

(a) Permitted;

(b) Controlled;

(c) Restricted discretionary;

(d) Discretionary;

(e) Non-complying; or

(f) Prohibited.

77. If an activity is described in a plan or proposed plan as a permitted activity, a resource consent is not required for the activity if it complies with the requirements, conditions, and permissions, if any, specified in the Act, regulations, plan or proposed plan[62].

[62] RMA, section 87A.

78. The key question in determining whether a permitted activity rule is valid is asking whether the rule is sufficiently certain to be understandable and functional[63]. Council must not reserve itself a discretion to approve a permitted activity[64].

79. In *Ruddlesden v Kapiti Borough Council*[65] the Court held that a condition which permits a Council to refuse approval for a permitted activity on the basis of some value judgement by the Council was ultra vires the relevant sections of the Town and Country Planning Act 1977[66].

80. In A *R & M C McLeod Holdings* the Court made the following statements (references are to "predominant use" as the case was decided under the Town and Country Planning Act)[67]:

> "The authorities cited establish two distinct propositions. The first is that a Council may not reserve by express subjective formulation, the right itself to decide whether or not a use comes within the category of predominant use. Council cannot, for example, put forward an ordinance which says A will be a predominant use "if the Council is satisfied that situation B exists." Predominant uses fall for objective ascertainment. That much certainty is always required. The second is that predominant use rights must not be described, even in an objective fashion, in terms so nebulous that the reader is unable to determine whether or not a use may be carried on in the zone. This second aspect does not involve any express subjective formula. It involves, simply, invalidity through inherent vagueness."

81. These cases remain good law under the RMA[68]. The key is that the permitted activity must be capable of objective assessment and application. However, the Court has, in some instances drawn a line. In *Friends of Pelorus Estuary Inc* whilst the Court stated its agreement that conditions requiring a subjective assessment are unlawful, it held that a condition requiring some degree of evaluation is not automatically

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[63] *A R & M C McLeod Holdings Ltd v Countdown Properties Ltd* (1990) 14 NZTPA 362 at page 28.
[64] At page 24.
[65] (1986) 11 NZTPA 301.
[66] *Ruddleston* at p 27.
[67] *McLeod* at page 22.
[68] See, for example, *Friends of Pelorus Estuary* Incorporated *v Marlborough District Council* Environment Court Blenheim, 24 January 2008, C004/08.

unlawful. In this instance the conditions attached to the permitted activity used the terms "significant" and "best practicable option"[69]. Whilst the Court held that there were practical disadvantages to in adopting conditions that require evaluation, in this instance the terms used have sufficient meaning under the RMA to be capable of being applied in practice[70].

82. In summary the short point is this: B+LNZ's proposed permitted activity rule seeks to provide for certainty and objective assessment. It does this through Tables X and X1, which provide for a readily assessable set of standards a permitted activity must comply with.

The Planning Approach – Policies

83. B+LNZ has proposed objectives to give effect to the Vision & Strategy and NPSFM. Ms Jordan's evidence for HS2 sets out the policies and rules to implement those objectives. In Ms Jordan's evidence, she summarises the changes she has made to the plan provisions in her Appendix 1. I refer you to the following paragraphs for useful precis of what she is proposing: 38, 61, 83, 120 and 180.

84. Policy 1A is a key policy that incorporates Table 3.11-1 at a policy level. It implements Ms Jordan's proposed objectives 1A[71] and 1B by particularising how water quality, as one measure of the health and wellbeing of the River, will be managed to PC1's values. Where the values are achieved under objective 1A they will be protected and where there is still work to be done, restored. As part of her preparation for this hearing Ms Jordan has identified some parts of the policy that she is dissatisfied with. B+LNZ will provide you with a set of amended plan provisions before the hearing.

85. Policy 1, along with subsequent policies, then sets the policy basis for the land use rules. Management responses are directed at (a2), (a3), (b), (b1), (b1)(a) and (c). It also includes Tables X and X1, as referred

[69] A condition attached to a permitted activity rule for discharge of storm water stated: "The discharge shall not have any **significant** adverse effect on water quality."
[70] At [100]-[102].
[71] Under the heading objective 1 in the draft plan provisions but referred to as 1A elsewhere. They are the same thing.

to in (a). Those tables, along with policy 4, provide the policy basis for permitted activities.

86. Those policies enable what Ms Jordan characterises as low risk activities based on either N leaching or stock unit limits. The permitted activities are generally extensive farming operations that do not rely on inputs. In other words, they are farmed within the land's natural limits.

87. Policy 1(b3) and (b4) provide guidance for resource consent applications, linking back to the freshwater objectives at Table 3.11-1.

88. The proposed policies contemplate the flexibility that B+LNZ have submitted is so important for the sector. That flexibility is provided for by, inter alia, policies 2 and 6. These policies implement objectives 2 and 4, which acknowledge those parts of the Vision & Strategy that provide for people's relationships with the River while recognising land use and other change is required to achieve the vision for a healthy River sustaining abundant life and its own health and wellbeing.

89. Policy 2 is key to the B+LNZ case that sub-catchment based approaches, where communities are empowered to own the problem and find solutions, will lead to better results. The policy provides for that through FEPs that, in accordance with Dr Mackay's and others' evidence, are prepared in light of the natural capital of the land.

90. Policy 6 does something similar by providing for the management of land use change where Table 3.11-1 freshwater objectives are achieved. It recognises that there are some instances where land use change can be undertaken as a permitted activity, or via a consented pathway, if the natural capital of the land provides for it. Policy 7 recognises that natural capital should be a central consideration in the allocation of diffuse discharges through, in this plan, land use rules.

91. Importantly, policy 4 also recognises the role resource consents, particularly their duration, can play in achieving freshwater objectives. Sensibly there is a policy basis for long term consents where the freshwater objectives are achieved. The second part of policy 4 is therefore, a direction to only grant consents for a duration that enables

the restoration and protection of water through nutrient loss reduction to achieve the freshwater objectives.

Land Use Rules v Discharge Rules

92. It is submitted the proposed rules are s 9 land use rules.

93. The purpose of PC1 is to assist WRC to carry out its function to achieve the purpose of the Act[72]. The particular function of the rules, for the purpose of giving effect to the Act in the Waikato, under s 30(1)(c)(ii) and (iiia) is the maintenance and enhancement of water quality and ecosystems in water bodies. It does this by controlling land uses that lead to the discharge of contaminants. It is submitted s 30 does not prevent the control of the use of land to fulfil its functions[73].

94. Part 3 RMA restricts a range of activities by reference to the receiving environment: land (s 9), the coastal marine area (s 12); riverbeds (s 13) and water (s 14). Activities on land are permitted unless otherwise restricted. Other activities, including discharges (ss 15 and 16), are generally more sensitive and require resource consent unless otherwise permitted, irrespective of location[74].

95. It is submitted that where effluent is applied to groundwater it is a discharge under s 15. In *Marlborough DC v Wooley*[75] the Court took judicial notice of the fact that effluent penetrating the ground could reach groundwater. Causation is a question of fact and degree to be resolved in the circumstances of the case[76], but the evidential threshold that a contaminant *"may*" enter water is a low one[77].

[72] Section 63(1).
[73] *Federated Farmers of NZ v Manawatu-Wanganui RC* [2011] NZEnvC 403 at [7].
[74] See summary of Counsel for the Appellant's submissions at [58] of the *Brook Valley Community Group* cited below.
[75] [2015] NZDC 13811.
[76] *Re Contact Energy* [2009] NZRMA 97.
[77] *Manawatu-Wanganui RC v Thurston* DC Palmerston North CRI-2007-054-2550, 20 February 2009.

96. In *Brook Valley Community Group Inc v Brook Waimarama Sanctuary Trust*[78], albeit in a quite different context[79], the Court of Appeal noted the distinction between district and regional rules, which could be significant when assessing what resource consents are required under part 3. In that case the Court observed that part 3 had the hallmark of being carefully crafted to cover different subject matters that did not have overlapping application[80]. It concluded there is no logical basis to interpret part 3 as requiring the same action to be consented to twice if it falls under multiple sections in the context of an aerial drop otherwise exempted from s 15 by regulations made under s 360. As such a consent under s 13 was not required[81].

97. I accept that care needs to be taken with relying on these statements because the case was not concerned with plan making under part 5. Nonetheless, the Court's second observation may have general application and, in my submission, does.

98. Importantly, s 15(1) does not require that the discharge be *expressly allowed* by a particular type of rule i.e. a discharge rule under s 87(e). It simply requires that the discharge be *expressly allowed* by *a rule* in a regional plan.

99. "*Rule*" is defined by s 43AA as a district or regional rule. The definition of "*regional rule*" is in s 43AAB(3) and provides:

> In this Act, unless the context otherwise requires, regional rule means a rule made as part of a regional plan or proposed regional plan in accordance with section 68.

100. It is submitted there can be no doubt the rules are regional rules that are being made under s 68 and there is nothing in the context of s 15 that requires a different interpretation.

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[78] [2018] NZCA 573.
[79] Declaratory and judicial review proceedings relating to the relationship between ss13 and 15 and regulations under s 360 relating to the discharge and depositing of 1080 aerially.
[80] I have my doubts about this.
[81] At [78] – [79].

101. In my submission a land use rule can be a regional rule and may *expressly* allow a discharge through its formulation and drafting. PC1 prefaces the rules by stating:

> The use of land for farming…

102. This introduction and the Plan, read as a whole, contemplates that an effect of the use of land for pastoral farming will be the diffuse discharge of contaminants[82]. The NPSFM recognises (inter alia) an effective freshwater management framework requires contaminants to be managed through the use and development of land and through discharges. Given the scheme of the Plan, which itself is to give effect to the NPSFM, it is submitted that it is clear that the intention of the rules is to expressly authorise the discharge of contaminants from animals (urine and dung) that are bought on to the property for the purpose of farming.

103. It makes no sense, in the same way the Court of Appeal noted the lack of logic, for there to be a requirement to create hybrid rules or require two consents for discharges where there is no obvious need to in order to perform s 30 functions for the ultimate purpose of giving effect to the Act. The RMA gives local authorities flexibility and choice as to how they perform their functions through plan making under part 5, subject to national direction under subpart 1 and regional direction given in the RPS under s 62.

104. It is submitted that this approach is open to the Waikato Regional Plan. RPS policy 8.3.3 directs Council to:

> [M]anage the effects of land use and activities on fresh water bodies and coastal water from non-point source discharges of nutrients and other contaminants where such discharges result in, or are likely to result in, the loss of values of a water body…

105. This does not preclude management of the effects through a discharge rule, but recognises the ability to manage land use to address diffuse

[82] For example, notified policy 1 which requires reduction in diffuse discharges of the four contaminants by famers taking certain actions defined in the sub-paragraphs.

discharges in the context of NPSFM value identification[83]. As Mr Stokes points out the Regional Plan already has rules controlling erosion[84].

106. It is submitted practicality is important. As best I understand it, the technology and science is not available to accurately apportion discharges to a particular location. So, for instance, there would be real difficulty demonstrating the extent to which an activity has contributed to in-steam concentrations, even putting to one side matters such as lag and attenuation. As such, performing the s 30(f) function through discharge rules is problematic and potentially impossible. That leaves us with the only practical way to perform the s 30 functions to give effect to the purpose of the Act, in this case by controlling diffuse discharges, is to regulate and control land use.

The Planning Approach – Rules

107. Ms Jordan's amendments retain the basic rule cascade from the notified version of PC1 with a number of significant changes necessary to implement the objectives and policies as promoted by B+LNZ.

108. The proposed interim permitted activity rule is retained with one change to reflect the new NRP approach proposed by Ms Jordan. The upper threshold for the NRP is representative of a level of risk to the freshwater objectives that require, on Ms Jordan and Dr Dewes', evidence different management to activities that do not. This approach is consistent with that in the notified PC1.

109. The permitted activity rule for low intensity farming on properties greater than 20ha is managed through Tables X and X1 in policy 1, which provide alternative permitted activity pathways. The rules rely on LUC classification and allow a 30% exceedance of the N leaching limit in the FMU.

110. This LUC-based risk threshold then allows flexibility between the two methods in Table X and X1. The stock units in Table X1 are based upon the effects of the land use, whereas N in Table X is a proxy for land use

[83] Recognised itself at policy 8.1.3.
[84] At paragraph 80.

effects. The ability to choose between the two is an important efficiency tool. It allows a farmer to manage land in a way that enables more stock than Table X1 provides for if the externalities are internalised. So, a farmer who has optimised farming systems within their farming landscape has the flexibility to farm more intensively if the underlying productive capacity of the land can sustain it. Conversely, where soils are, for instance, leaky, the stock units in Table X1 have been determined by Dr Dewes to be sustainable and not reliant on inputs[85].

111. The cascade then leads to a controlled activity rule, which applies to medium intensity farming presenting a moderate level of risk. At this point the risk to the achievement of the freshwater objectives begins to rise so greater regulatory oversight is required.

112. It is not until this point that an FEP needs to be prepared and provided to the Council, because of the increased risk. It is anticipated that many farmers who farm on a permitted basis will nonetheless have FEP. They will also have needed to undertake some LUC analysis to ensure conformance with either one of the policy 1 tables.

113. The production of FEP for activities that are controlled, and restricted discretionary, also addresses other contaminants of concern. Mr Parkes and Mr Stokes' evidence is relied on by Dr Mackay to conclude that the B+LNZ Land Environment Plan (FEP) Program provides a robust and effective way to ensure land management impacts are addressed. This is because the identification and management of CSA and pathogen pathways is an effective approach to reduce those losses[86]. This means that Ms Jordan's rule framework, while using N as a proxy for risk, also ensures that other contaminants are managed.

114. I note also that at Schedule 1 there are amendments requiring demonstration of the actions that are described in the FEP by *reference* to the freshwater objectives in Table 3.11-1. This is consistent with the "line of sight" that B+LNZ proposed as part of the policy framework and,

[85] See paragraph 131.
[86] See paragraphs 34 - 36.

it is submitted gives more focus in the FEP to the outcomes sought by the freshwater objectives.

115. Another important control is the N risk scorecard (NRS) proposed by Fonterra, which has found favour with Ms Jordan[87]. She sees it as a method that is easily used and understood by farmers through its "traffic light" approach. A controlled activity would need to comply with an assessment grade of orange or better.

116. An obligation not to exceed an N leaching rate, based on a percentile or limit, for the FMU is also proposed, to be determined using OVERSEER[88]. This is a sinking lid approach that requires the identified leaching rate to be complied with by a certain date.

117. Before defaulting to a fully discretionary rule, there is a restricted discretionary activity rule. This is where some grandparenting is retained[89]. The concerns highlighted by B+LNZ arising from grandparenting can, it is submitted, be overcome where it is for a finite period and only applies to certain discharges and land uses. If accompanied by a sinking lid approach the concerns about rewarding inefficient land use with high externalities are addressed. The policies directing attention to the freshwater objectives, and management through the duration of consents will provide an important link to the values and outcomes that are ultimately giving effect to the Vision & Strategy and NPSFM. The proposed rule is otherwise largely similar to the Officers' proposal.

Section 70

118. There was one matter that was overlooked when briefing Ms Jordan's evidence, which is an evidential basis to satisfy s 70. I have addressed that with Ms Jordan and had her confirm to me that she is satisfied that the effects on the receiving waters set out in that section do not arise. I

[87] See paragraph 145.
[88] Ms Jordan, Dr Chrystal and Dr Dewes all acknowledge its limitations, but say it has a role to play in regulation. I agree.
[89] See rule 3.11.5.4(8).

have asked her to confirm that for the record when she gives her evidence.

Evidence

119. I am calling the following witnesses:

(a) Dr A Mackay – soil scientist;

(b) Mr S Stokes – environment strategy manager B+LNZ;

(c) Mr R Parkes – environment capability manager B+LNZ;

(d) Dr A Dewes – sustainable agriculture consultant;

(e) Dr J Crystal – environment data analyst B+LNZ;

(f) Dr T Cox – water resources engineer;

(g) Ms C Jordan – planner.

120. B+LNZ's evidence is called in the order set out above and is structured on the following basis:

(a) Dr Mackay is a nationally recognised expert and sets the stage for natural capital. He explains why it is important and the notion of ecological services. He introduces LUC as a proxy for natural capital and the need to match farm use systems to that natural capital;

(b) Mr Stokes is an experienced expert on LUC classification. After explaining some of its history he notes that over time it has become broader than just about soil conservation. Land use, he says, should be based on natural capital informed at the farm-level through the application of FEP;

(c) Mr Parkes picks up from his HS1 evidence regarding the general profile of B+L sector. He provides details on the

B+LNZ-facilitated FEP process to achieve change and concludes by commenting on the proposed setback and fencing rules;

(d) Dr Dewes is a well-respected veterinarian, farmer, and consultant in the agricultural space. She is also the head of environment at Pamu. She is called by B+LNZ in her capacity as an agricultural consultant from Tipu Whenua Ltd. Dr Dewes comments on the externalities of concern of the dairy industry and gives evidence about how that sector's intensification has been undertaken, in some cases, without environmental limits being taken into account. She sets out how the sector can reduce N without farmers going out of business and to facilitate land use change. Her evidence is important in the context of the concerns raised by that sector about the degree of change that is required and why grandparenting of N is not the only answer available to you;

(e) Dr Crystal carries on her HS1 evidence and has undertaken further case studies on farm optimisation and farming to the grass curve. Her evidence provides the basis for Ms Jordan's proposed permitted activity rule based on stocking units;

(f) Dr Cox has undertaken further modelling using more accurate land use information and N profiles to determine the contributions of various sectors to in-river N. He models different management methods to achieve the change required, importantly demonstrating that small changes will have significant impact on the amount of land use change required; and

(g) Finally, Ms Jordan gives evidence on the particular planning response to the underlying principles B+LNZ is promoting for PC1.

Concluding Comments

121. It is submitted that there is something fundamentally sensible about B+LNZ's approach. It should be unarguable that the starting point should be from a position of understanding and knowledge about the resource.

122. An approach that grandparents N has the inherent disadvantage of failing to provide incentives to reduce leaching[90]. Dr Dewes, Dr Cox and Mr Burtt all demonstrate that the externalities of the dairy sector have, over time, disproportionately contributed to N loads in the river because landscapes are pushed beyond their natural capacity[91]. This has been a systematic failure to identify the carrying capacity of the underlying land resource and to manage it accordingly. It is submitted the only fair way to address this in a context of the statutory, national and local planning framework and direction (set primarily by the Vision & Strategy and NPSFM) is for those uses, such as dairy, to come back to the sustainable levels that other sectors have, can, and should be operating to.

C Thomsen
Counsel for Beef + Lamb New Zealand Ltd
27 June 2019

[90] Similar to the conclusion from *Day* at [5-177].
[91] See Dr Dewes at paragraph 135.