

19-D-00092

18 FEB 2019

s 9(2)(a)

Dear s 9(2)(a)

Thank you for your email of 18 January 2019 requesting the following under the Official Information Act 1982 (the Act):

- A copy of the original letter to the Minister for the Environment referred to in the WRC email together with a copy of your reply on behalf of the Minister to that letter;
- Copies of any other correspondence (including emails) between the Minister or the Ministry for the Environment and any other persons (such as Landcorp Farming Limited (PAMU) or other interested persons) pertaining to the WPL applications;
- Notes of any discussions (including phone conversations) regarding the WPL applications with any other persons about such matters.

The information you have requested is enclosed. I have withheld the details of the group who emailed the Minister requesting a meeting as they feel releasing their details would negatively impact their operations in the region.

I would also like to inform you that this response may be published on the Ministry for the Environment website at: www.mfe.govt.nz/about-us/official-information-act-requests

You have the right to seek an investigation and review by the Ombudsman of my decision on this request, in accordance with section 28(3) of the Act. The relevant details can be found at: www.ombudsman.parliament.nz.

If you have any queries, please feel free to contact our Executive Relations team.

Yours sincerely



Martin Workman
Director Water

Encl:

Document No.	Document Date	Content	Decision	OIA Section/s applied
1	22 May 2018	Email to the Minister for the Environment titled: Proposed Plan Change 1 to Waikato Regional Plan – non notification process for non-complying activities	Released in full	N/A
1.1		Attached letter titled: Waikato Healthy Rivers - Plan Change – Processing \$211m consents prior to submissions closing	Released in full	N/A
2	31 May 2018	Email to Waikato Regional Council subject line: Ministerial about Proposed Plan Change 1 and Wairakei Pastoral	Released in full	N/A
2.1	31 May 2018	Attachment to Email	Released in full	N/A
3	1 June 2018	Email from Waikato Regional Council Subject line: Re: Ministerial about Proposed Plan Change 1 and Wairakei Pastoral	Released in full	N/A
4	5 June 2018	Email from Waikato Regional Council subject line: Re: Wairakei pastoral application	Released in full	N/A
5	11 June 2018	Reply from Minister Parker	Released in full	N/A
6	29 July	Email from Waikato Regional Council to MfE Subject line: Re Wairakei Pastoral Ltd	Released in full	N/A
7	13 August 2018	Email to the Minister requesting a meeting	Released in part	S9(2)(a) To withhold the privacy of natural persons
7.1		Newspaper cutting emailed to the Minister with request for meeting	Released in full	N/A
8	20 September 2018	Talking points for meeting with Minister	Released in part	Material in scope released.

Document No.	Document Date	Content	Decision	OIA Section/s applied
9	20 September 2018	David Parker meeting notes	Released in part	Material in scope released.
10	15 January 2019	Email from Waikato Regional Council subject line: Wairakei Pastoral Ltd – notification decision	Material in scope released in full	N/A

Released under the provision of
the Official Information Act 1982

From: Bridget Robson [mailto:bridget@eland.co.nz]
Sent: Tuesday, 22 May 2018 5:27 PM
To: Hon David Parker <David.Parker@parliament.govt.nz>
Cc: Kiritapu Allan <kiri.allan@parliament.govt.nz>
Subject: Proposed Plan Change 1 to Waikato Regional Plan - non notified process for non-complying activities

Dear David

Please find attached a letter explaining my concerns on consequences of the RLAA changes to the use of notification provisions for consents. In this case as they relate to Wairakei Pastoral seeking rights to over 500T of diffuse N discharge to the Waikato catchment.

Regards

Bridget Robson

eLand

Ph +64 27 224 1574

+64 7 307 0977

This email and any attachment is confidential

RELEASED UNDER THE OFFICIAL INFORMATION ACT 1982

21 Carling Road
Whakatāne 3120

Rt Hon David Parker
Minister for the Environment
Parliament

22 May 2018

Dear David

Waikato Healthy Rivers - Plan Change – Processing \$211m* consents prior to submissions closing

It appears that the RLAA changes to the RMA on consultation provisions (section 95) did not foresee that these could be used in the early stages of a Proposed Plan to secure resources such as diffuse N discharge "rights", when the plan provisions may still undergo radical change.

My concern is an application to secure 528 Tonnes of diffuse Nitrogen discharge in the Waikato River catchment, a non-complying activity, was being processed as a non-notified activity by Waikato Regional Council. Should this consent be granted, it will seriously limit the ability to modify the provisions of the proposed plan. A wide range of groups are concerned about.

Proposed Plan Change 1 was prepared using an extensive collaborative stakeholder process. The stakeholders for the collaborative process were chosen by Waikato Regional Council and the process was led and supported by Waikato Regional Council. There was a strong emphasis on determining an allocation approach for Nitrogen. The plan was Proposed in 2016 and went through the first round of submissions then, however there was an injunction from part of the Lower Waikato so that the Hauraki part of the catchment be properly consulted. As a result of the later inclusion of Hauraki the plan was re-proposed in April 2018.

There were many submissions seeking that the plan design did not support or lead to grand-parented allocation, which present policy direction is indicating.

PC1 will now go through an extra submission round before proceeding through further submissions, hearing and appeal. I.e. There are many steps which may create significant changes before the final plan becomes operative.

In the meantime there are a number of parties who've decided to get consent for nitrogen discharges using the proposed plan provisions. Although the relevant rule is for a non-complying activity, Council has been handling those consents as non-notified and only seeking comment from two of the co-governing River Iwi as having the status of affected protected customary rights (RMAs95B(2)(a)).

*Wairakei Pastoral has applied for consent for total allowable diffuse nitrogen discharge of **528 tonnes per year**. That is a huge amount to be tied up using a rule that hasn't had RMA Schedule 1 scrutiny yet. If N is worth what it is in Lake Rotorua, the N being sought has a value of \$211 million.

The Overseer calculations of the amount of N being released as a diffuse discharge cannot be done with great accuracy. The Waikato Plan Schedules which set out who is qualified to do Overseer runs, which version and protocols to use etc., mean that considerable variance (> 30%) in calculations in output from the same property are quite possible.

Securing diffuse N discharge resources at this early stage of the Proposed Plan could seriously interfere with attempts to alter the trajectory of the plan, to be based on something that is more equitable and that creates greater land use opportunities than the grandparent approach it is heading towards.

The risks:

- The Proposed plan hasn't even got through the submissions phase yet,
- Applying for N discharge which is a Non complying activity
- Non notified (RLAA changes to RMA shut out what would otherwise be regarded as affected parties)
- N calculated using Overseer – which has significant and unrecognised error factors

If this consent is granted, the applicants keep it. Even if the plan changes markedly and their overseer numbers aren't right.

We believe that the RLAA provisions did not anticipate this risk and although Council may believe that they are appropriately following the new law, in this instance it is having serious unintended consequences.

Please would you urgently investigate this situation, with a view to ensuring that nascent plans cannot be used to acquire very valuable resources on a non-notified basis – particularly for non-complying activities.

Yours sincerely

Emailed

Bridget Robson

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Nick Vincent

From: Nick Vincent
Sent: Thursday, 31 May 2018 4:55 PM
To: 'Tony.Quickfall@waikatoregion.govt.nz'; 'Bruce.McAuliffe@waikatoregion.govt.nz'
Subject: Ministerial about Proposed Plan Change 1 and Wairakei Pastoral
Attachments: Document1.docx

Hi Bruce and Tony

The attached letter to the Minister talks about the process for plan change 1 and Wairakei Pastoral's application for a consent that would allow a total allowable diffuse discharge of 528 tonnes per year.

Are you able to provide any background to the application and the consideration of consents for my reply? If you are would it be possible to have the information by Monday the 11th?

Many thanks

Nick

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Dear David

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Please would you urgently investigate this situation, with a view to ensuring that nascent plans cannot be used to acquire very valuable resources on a non-notified basis – particularly for non-complying activities.

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Nick Vincent

From: Tony Quickfall <Tony.Quickfall@waikatoregion.govt.nz>
Sent: Friday, 1 June 2018 12:14 PM
To: Nick Vincent; Bruce McAuliffe
Subject: RE: Ministerial about Proposed Plan Change 1 and Wairakei Pastoral

Hi Nick. I've passed your request onto Chris Mclay (director if resource use directorate - consents) and Mark Brocklesby (rud principal advisor), and asked them to liaise with you directly. Mark is on leave until mid next week so feel free to follow up with Chris if there is any urgency.

Rgds
Tony

Sent from my Windows Phone

From: Nick Vincent
Sent: 31/05/2018 4:54 p.m.
To: Tony Quickfall; Bruce McAuliffe
Subject: Ministerial about Proposed Plan Change 1 and Wairakei Pastoral

Hi Bruce and Tony

The attached letter to the Minister talks about the process for plan change 1 and Wairakei Pastoral's application for a consent that would allow a total allowable diffuse discharge of 528 tonnes per year.

Are you able to provide any background to the application and the consideration of consents for my reply? If you are would it be possible to have the information by Monday the 11th?

Many thanks

Nick

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Nick Vincent

From: Mark Brockelsby <Mark.Brockelsby@waikatoregion.govt.nz>
Sent: Tuesday, 5 June 2018 8:59 AM
To: Nick Vincent
Subject: Wairakei pastoral application

Hi Nick,

This is in response to your recent email to Tony Quickfall:

The attached letter to the Minister talks about the process for plan change 1 and Wairakei Pastoral's application for a consent that would allow a total allowable diffuse discharge of 528 tonnes per year.

Are you able to provide any background to the application and the consideration of consents for my reply? If you are would it be possible to have the information by Monday the 11th?

I have also read the letter which was attached and correct an important error it contained.

The application was made in late 2017 and seeks to authorise land use change across up to 1800 hectares of land, from forestry and drystock to dairy. Note that this same land use conversion was the subject of a successful request by WPL, prior to the Plan Change being notified, for a certificate of compliance. As you will be aware, CoCs are subject to s20A(2) which effectively means that the protection provided by the CoC is only temporary and is subject to several caveats (refer s20A(2)(a) and (b)). S20A(2) requires that consent must be obtained for the activity within 6 months of the rule becoming operative. At this stage that is likely to be several years away and WPL has chosen to pre-empt that requirement by applying early, which it is, of course, entitled to do.

The application is anticipated under Plan Change 1, albeit as a non-complying activity (rule 3.11.5.7). Given the scale of the application and the importance of achieving the Plan Change's objectives, we are taking a very rigorous approach towards the application's assessment. We have requested further information from the applicant. Some of that information has been received and we are in the process of assessing it, some is yet to be provided. It is important to note that, contrary to the statement in the letter which you attached, no decision has yet been made whether or not to notify the application. That decision will be made once we have received and assessed the information we have requested.

The attached letter refers to the fact that the Plan Change is currently going through the Schedule 1 submissions, hearings and appeal processes and that it is possible that aspects related to the nitrogen management provisions in it, may well change. We agree that this is correct, however, as noted, the Plan Change does anticipate that applications may be made for land use change as of the date of notification (22/10/16) and our understanding is that the Council is statutorily obligated to process this and other applications under rule 3.11.5.7, in accordance with the Act. That is what we are doing. Note that the policy threshold for granting such an application is very clear in the Plan, requiring the applicant to demonstrate a reduction in the loss of all four contaminants (N, P, sediment, E coli) as a result of the land use change. We can assure the Ministry that we are taking a rigorous and comprehensive approach to the assessment of whether, in fact, such a reduction is demonstrated.

I trust this is sufficient information to respond to the matters that have been raised with you. However, feel free to call me if you require any further information or clarification of any matter.

Kind regards

Mark Brockelsby

Mark Brockelsby Senior Advisor | Resource Use
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Hon David Parker BCom, LLB

Attorney-General
Minister for Economic Development
Minister for the Environment
Minister for Trade and Export Growth

Associate Minister of Finance



11 JUN 2018

18-M-00948

Bridget Robson
21 Carllng Road
WHAKATANE 3120

Dear Bridget Robson

Thank you for your letter of 22 May 2018 regarding the Waikato Healthy Rivers Plan Change and a non-complying resource consent application for diffuse nitrogen discharge.

You have stated your concern that the application to discharge 528 tonnes per year of diffuse nitrogen in the Waikato River catchment is being processed as a non-notified application. The Resource Legislation Amendment Act 2017 introduced a step by step process for determining notification requirements. My officials have been in contact with the Waikato Regional Council regarding this application and at the time of writing were advised that the Council was waiting for further information and had not yet made a decision on the notification of the application. I would encourage you to contact the Council directly about this matter.

I understand your concerns about the application and the fact that the proposed plan is in the early stages of the plan making process under Schedule 1 of the Resource Management Act 1991 (RMA). However, the RMA does give a person the right to apply for resource consent even when the plan is only a proposed plan, except in the case of a prohibited activity. I would recommend that you talk to the Council about considering the proposed plan, when making decisions on resource consent applications.

You have also pointed out the limitations of the Overseer model for regulatory use. To address this, in Budget 2018 the Government has allocated \$5M over four years to improve the model. In the interim the limitations of the model are a matter for councils to consider as they develop their rules.

I encourage you to continue to be involved in the Waikato Healthy Rivers Plan Change process. Plan Change 1 provides an opportunity to significantly improve the state of freshwater in the Waikato and create profitable and sustainable communities and farms in the future.

Yours sincerely

Hon David Parker
Minister for the Environment

RELEASE UNDER THE OFFICIAL INFORMATION ACT 1982

Nick Vincent

From: Victoria Young
Sent: Tuesday, 5 February 2019 9:24 AM
To: Nick Vincent
Subject: FW: Wairakei Pastoral Ltd

From: Chris McLay <Chris.McLay@waikatoregion.govt.nz>
Sent: Sunday, 29 July 2018 8:18 PM
To: Martin Workman <martin.workman@mfe.govt.nz>
Cc: Mark Brockelsby <Mark.Brockelsby@waikatoregion.govt.nz>
Subject: Re: Wairakei Pastoral Ltd

Hi Martin,

The consent is still on hold while further information is sought to assess their impacts etc so a decision can be made regarding notification. There is a lot of ongoing discussion with WPL. The certificate of compliance does not mean they get around PC1 and anybody can apply for a consent under the policy (in their case, non-complying rule for land use change). They will need to demonstrate that their proposed land use will have a smaller footprint relative to the reference period. Interestingly, Pamu (Landcorp) and WPL do not seem to see eye to eye on things yet they both rely on each other under PC1 going forward!

Mark - can you give Martin any other relevant update when you return to work please?

Martin - are you at the EDS conference this week? I am there,
 Chris

Sent from my iPad

On 29/07/2018, at 6:16 PM, Martin Workman <martin.workman@mfe.govt.nz> wrote:

Hi Chris

Can you give me an update on the status of the resource consent mentioned in the below article and what its implications are for contaminant loads. Just getting prepared for any questions that might come from the Minister.

https://www.nzherald.co.nz/the-country/news/article.cfm?c_id=16&objectid=12095661

Martin Workman – Director Water

Ministry for the Environment – Manatū Mō Te Taiao and Ministry for Primary Industries

Mobile: 022 517 3268 Email: martin.workman@mfe.govt.nz Website: www.mfe.govt.nz

23 Kate Sheppard Place, PO Box 10362, Wellington 6143

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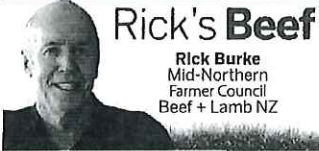
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THE COUNTRY

Is this the great nitrogen fix?

OPINION

Rick's Beef



Rick Burke
Mid-Northern
Farmer Council
Beef + Lamb NZ

With most farms in the Waikato-Waipā region about to become involved in the Plan Change 1 hearing process to defend their right to farm, I find it ironic the region's largest farmer, Wairakei Pastoral Ltd (WPL), is working — sneaking in my view — to push through a non-notifiable resource consent. This will lock in its rights to swap existing low-intensity land use for a more intensive use, resulting in increased catchment pollution for a long time.

Plan Change 1 (PC1) is to give effect to the Treaty settlement to improve water quality in the region. A preferential consent to WPL, if granted, is not only totally at odds with this objective but will penalise other land users who will be required to provide headroom to offset the WPL increase in nitrogen. This situation is an affront to those who don't have the opportunity to compete on the same playing field and rulebook.

In an article in the *NZ Local Government* magazine last year, Sir Geoffrey Palmer, QC, was highly critical of the performance of councils. His key points were:

- The performance of local government in relation to the environment appears to be 'seriously deficient'.
- Local government must not be pushed around by powerful economic interests whose activities pollute.
- And 'what is at stake here are the interests



If Waikato Regional Council decides in favour of Auckland-based corporate Wairakei Pastoral Ltd, other farm businesses in the catchment are likely to pay the price.

Photo / File

of future generations whose interests the Resource Management Act is explicitly designed to protect'.

Palmer's concerns about 'powerful economic interests' directly apply to Waikato Regional Council as it considers the non-notifiable resource consent application from WPL, an Auckland-based corporate.

It is important to note that WPL in partnership with Landcorp was able to expand its forest-to-farm conversions because of the ETS arbitrage scheme which enabled carbon prices to collapse. In a state of paralysis, the regional council and the Crown didn't apply a land-use change moratorium, despite science indicating that contaminant loss discharge from the new intensified land use would impact water quality.

WPL obtained a Certificate of Compliance to give notice of its intent before the regional council notification of PC1 then earlier this year applied for a resource consent. By doing

this, it will be able to get around the rigours of PC1, which has a rule banning change of land use, and also locks in a nitrogen allocation determined across the entire WPL land area.

All eyes should be on the regional council. Its credibility is at stake as it works through the consent to convert 1800ha currently in forestry and drystock to more intensified use likely to be a mix of dairy and some drystock. If granted, it will give WPL certainty to farm with an additional allocation of nitrogen, which will convert into a tradeable property right. This will give the whole WPL estate a right to pollute to an estimated value of \$210 million.

This highlights how a grandparenting policy to manage nitrogen within PC1 incentivises perverse behaviour, where the focus is on accumulating wealth through nitrogen allocation rather than on farming within the ecosystem health limits of soil types and landscapes. WPL is farming on pumice soils which provide easy passage of nitrogen

to ground water then to waterways which could cause serious environmental harm.

When previous governments allowed forestry to farm conversions to proceed, most to intensive dairy, they did so knowing a significant load of nitrogen and other contaminants would make its way to the Waikato River. I would suggest this is now readily observable in the monitoring of groundwater bores and assessing the nitrate trends since the original land conversions began 15-20 years ago.

The failure to impose a land-use change moratorium some years ago was a display of feebleness and irresponsibility and now we may have more of the same.

Neighbouring land users could ultimately be out of pocket if there is a requirement to reduce contaminant loss. This could arise as PC1 moves to Plan Change 2, and so on, with sinking lid on allowable contaminant loss in the quest to improve water quality and possibly provide headroom for other land users — for example Māori-owned Central North Island forests.

Of interest is the additional pressures this land-use change will have in the future, including the need to manage greenhouse gases and biodiversity.

Central and local governments are tasked with the responsibility to act for the 'common good' of our communities, the economics of our farm systems and the environment in a balanced manner, and this is laid out in the RMA legislation ensuring outcomes are equitable, fair and sustainable. This is also outlined in the Brundtland Report 1987 'Sustainable development is development that meets the needs of the present without compromising the ability of future generations to meet their own needs' and again enshrined as part of the Treaty settlements with river iwi.


The question I now ask is whether the regional council will act for the 'common good' for all Waikato people or bow down in servitude to the Big Business Auckland corporates.

■ Rick Burke is also Chairman of Farmers For Positive Change


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Docs 8 and 9

In scope excerpts from Document 8 - Minister Parker's talking points for meeting requested in document 7 email

Wairakei resource consent

Wairakei Pastoral Limited (WPL) applied to the Waikato Regional Council on November 22 for consent to convert 1800 hectares of South Waikato Land (a combination of woody vegetation, non-dairy pasture and arable farmland) to dairy farming.

Farmers for Positive Change (FPC) have expressed significant concern that, if granted, the consent will not improve water quality and will penalise other users who will be required to provide headroom to offset the WPL increase in nitrogen. FPC are also concerned that WPL obtained a Certificate of Compliance to give notice of its intent before the WRC notification the Proposed Healthy River Plan Change 1, then applied for resource consent. They say this will enable WPL to get around the rigours of Plan Change 1.

WRC have previously advised that they are seeking more information on the application and are yet to determine if the application will be publicly notified. WRC advise that the applicant will need to demonstrate that their proposed land use will have a smaller footprint relative to the reference period. It also appears that Pamu, which leases the farms from Wairakei Pastoral, was not responsible for the consent application and Pamu was not formally consulted on it.

In scope excerpts from Document 9 - notes of the meeting

Wairakei Pastoral Limited

Non-notified resource consent filed with Waikato Regional Council

To be further investigated

RELEASED UNDER THE OFFICIAL INFORMATION ACT 1982

Nick Vincent

From: Mark Brockelsby <Mark.Brockelsby@waikatoregion.govt.nz>
Sent: Tuesday, 15 January 2019 11:17 AM
To: Nick Vincent
Subject: Wairakei Pastoral Ltd - notification decision

Dear Nick – referring to your earlier enquiries regarding the above.

This is to advise that a decision has been made on notification, in respect of an application by Wairakei Pastoral Ltd to change land use (converting up to 1318 ha of forestry and drystock to dairy) in the Wairakei Estate in the Upper Waikato Catchment.

The decision was to publicly notify the application.

At this stage the application is formally "on hold" and we are awaiting advice from the applicant as to whether they wish to proceed with the application.

Kind regards
Mark Brockelsby

Mark Brockelsby Senior Advisor | Resource Use
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