

**BEFORE THE HEARING COMMISSIONERS
THE PROPOSED WAIKATO DISTRICT PLAN (STAGE TWO)**

UNDER the Resource Management Act 1991

IN THE MATTER of Hearing 27C: Flood Hazards and Defended Areas

**STATEMENT OF JESSE QUENTIN GOODING ON BEHALF OF FEDERATED
FARMERS OF NEW ZEALAND**

16 April 2021



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INTRODUCTION

1. My name is Jesse Quentin Gooding. I am a Regional Policy Advisor with Federated Farmers of New Zealand (“**FFNZ**”). I have been in resource management related positions in local government and a non-governmental organisation for the last three years. I hold a Bachelor of Environmental Planning degree from the University of Waikato.
2. I have reviewed the S42A report prepared by Janice Carter dated 31 March 2021, for Hearing 27C – Flood Hazards and Defended Areas in relation to the proposed district plan, stage 2 (“**PWDP**”). This report addresses matters to which FFNZ made submissions (submitter 2173) and further submissions (FS3030).
3. The contents of this statement are made in my role as Regional Policy Advisor, in response to some of the key recommendations made on the submission points that have been assigned to this hearing topic.
4. To assist the Panel the statement follows the same structure as the planning report.

SCOPE OF HEARING STATEMENT

5. The planning framework is well described in both the Section 32 Report and the Section 42A Report provided by the WDC. I generally agree with the analysis. Given the general agreement I do not repeat the analysis. Rather this statement sets out where I depart from the views expressed in the Section 32, Section 32AA or Section 42A Reports, or where I consider that an alternative planning provision would better give effect to, be not inconsistent with, or have regard to (as the case may be), the various relevant documents.

Part A – DEFINITIONS TO CHAPTER 15

6. FFNZ submitted (2173) in support of retaining the definitions of Flood Plain Management Area, Flood Ponding Area and High-Risk Flood Area, subject to appropriate refinement through the Schedule 1 process [2173.79, 2173.78, 2173.77, 217374]. The S42A Report recommends retention of these definitions, and this recommendation is supported.

Policy 15.2.1.10 Areas defended by stop banks adjacent to the Waikato River

7. In respect to Policy 15.2.1.10 (a) FFNZ sought to add a qualifier to the end of the Policy as repeated in the S42A report. The S42A report writer is correct when she says our concern is that only inappropriate land uses should be controlled and that normal farming activities are appropriate and do not need to be controlled. I agree with her that farming is not one the activities that the policy and associated rules are directed towards. This is the reason that we wish to clarify the policy as we consider the notified version fails to make this clarification adequately enough to uphold the

intended risk-based approach. While subdivision is certainly a focus of this policy, it is also drafted to manage new buildings, new accessory buildings and earthworks, all of which may be constructed, maintained, or undertaken in a farming context. We do not support the S42A recommendation to reject our submission to amend Policy 15.2.1.10 [2173.12] or to reject the further submissions in support by Mercury New Zealand Limited [FS3034.93], Horticulture New Zealand Limited [FS3027.9] and Timberline Contracting [FS3032.59]. We request that the hearing panel consider retaining the proposed wording or consider alternative wording that will better focus the direction of the Policy.

8. In respect to Policy 15.2.1.10 (b) the S42A report further addresses the earthworks and ancillary rural earthworks definitions. The reporting Planner considers the definition of ancillary rural earthworks proposed at the end of the Rural Topic Hearing too broad. They consider it could allow for inappropriate activities such as the creation of a drain, farm ponds or an air strip adjacent to a stop-bank. As stated, we agree that if the definition of earthworks in the National Planning Standards is adopted, and ancillary rural earthworks cannot be excluded from the definition of earthworks in chapter 13, the National Planning Standards version will be sufficient to enable **some**, but not all, normal farming practices within 50m of a stop bank, while maintaining the intent of Policy 15.2.1.10. We support this approach in the context of stop banks. As we don't consider rural ancillary earthworks to be necessary next to or on a stop bank so are satisfied that cultivation and fencing are sufficient here. We ask for a greater range of earthworks on the flood plain as we consider this hazard area covers a greater area of farming land and does not carry the same risk of undermining flood protection infrastructure that is present when undertaking earthworks next to a stopbank. I refer here not to the residual risk to the property or a person due to overtopping or a breach but to the effect of the earthworks on the structural integrity of the stopbank itself.
9. In regard Policy 15.2.1.12 and permitted activity rules farmers advise us that there is a gap between the very limited soil disturbance activities such as cultivation and fencing allowed under the National Planning Standards definition and larger scale but still low risk activities including farm track establishment and establishing stable fence lines. FFNZ therefore continue to seek that ancillary rural earthworks are added to 15.4.1 P6, or a new permitted activity rule is provided to enable a wider range of earthworks. Failing these we still consider extending the thresholds in P8 to be appropriate but consider this the least efficient planning approach. I discuss this later in my Hearing Statement in respect to Rule 15.4.1.

15.2.1.12 Reduce potential for flood damage to buildings located on the Waikato and Waipa River floodplains and flood ponding areas

10. FFNZ sought several amendments to Policy 15.2.1.12. The S42A report states that these were drafted with the intention of moving the focus of the policy onto the risk to human life rather than only property. This is partially correct but doesn't fully consider the farming perspective. The focus of our relief is to clarify that there are many non-habitable buildings, particularly in the farming context, that may be constructed to a level of risk where their utility to a working farm outweighs the potential loss of property. Where a new building, or accessory building is necessary to the operation of a farm it may be appropriate within the context of being non-habitable. We consider such a "trade off" is not appropriate in the context of habitable buildings unless appropriate rules apply. FFNZ are of this view not only because a habitable building extends risk from property to both property **and** human life, but because the residential use of a habitable building is unlikely to be necessary in the context of farming or other agricultural uses. That is, a hay shed, pump shed or other farming structure in the Waikato and Waipa floodplains may be necessary to a farming or growing operation, but the residential use of a habitable building is not instrumental to these activities. This being the case we consider it reasonable to put more controls on a habitable building than a non-habitable, implement or storage building.
11. I agree with the S42A report when it says that loss of life is considered to be an unusual occurrence during a 1% AEP flood event on the flood plain. The relief was sought to Policy 15.2.1.12 rather than 15.2.1.1 (which deals with the High-Risk Flood Area) because one focuses on buildings specifically while the other focusses generally on subdivision and new development with consideration of people's safety, well-being and property which we take to be appropriate in order to meet Objective 15.2.1 and the Waikato Regional Policy Statement (WRPS). If buildings were the direct focus of the Policy 15.2.1.1 we would ask for the same relief to this policy as the principle stands. As 15.2.1.1 is written we consider it broad enough to apply the intended risk-based approach.
12. The reporting Planner also considers that the focus of the policy to habitable buildings only rather than all buildings is inappropriate and would not meet Objective 15.2.1. I am of the view that the amendments we request to Policy 15.2.1.12 would be appropriate if the relief sought by FFNZ to Objective 15.2.1 is accepted. We submitted [2173.2] that the Objective be amended as follows:

"A resilient community where the risks from natural hazards on people, property, infrastructure and the environment ~~from subdivision, use and development of land~~ are appropriately identified and assessed to ensure they can be avoided or appropriately mitigated."

13. Or alternatively the relief sought by Horticulture New Zealand which was supported by FFNZ [FS303.24] sought that Objective 15.2.1 be amended as follows:

“(a) A resilient community where the risks from natural hazards on people, property, infrastructure and the environment from subdivision, use and development of land are avoided or appropriately mitigated; and who are able to undertake appropriate use and development in order to respond to climate change. For instance, provide water storage, or undertake different types of primary production and the practices that may support primary production.”

14. I discuss these changes to the Objective in more detail in my Hearing Statement for topic 27B.
15. Our proposed amendment is intended to provide for the risk-based approach where a risk is appropriately identified as either high risk or low risk and avoided, restricted, or enabled depending on where it falls on that spectrum. In my view this is consistent with the overall objective and policy direction of the PWDP and the WRPS. Consequently, we oppose the recommendation to reject our amendments [2173.14] along with the further submissions from Mercury NZ Limited [FS3034.94] and Horticulture New Zealand [FS3027.6] and ask that the hearing panel support our amendments.

Policy 15.2.1.14 Hazardous substances within floodplain

16. FFNZ asked for deletion of Policy 15.2.1.14 on the basis that the S32 analysis provides no evaluation of this policy and fails to explain why this policy and associated rules are required. We do not dispute that the location and storage of hazardous substances within the floodplain and flood ponding areas has potential to create an additional layer of risk however the rules framework, which is reliant on the notified definition of hazardous facility, extends beyond the policy intent and will impose unduly onerous controls for the use of hazardous substances as well. The highly contested notified definition of hazardous facility has the potential to capture whole farms, as notified Rule 15.4.3 (a)(D3A) will, for example, have the effect of triggering a discretionary resource consent for the spreading of fertiliser and use of agrichemicals in these areas. We can assure the Hearing Panel that farmers are not spreading fertiliser or drenching cattle or using round-up in a flood event, but they will be doing those activities in the identified areas under appropriate conditions, as and when required. It is difficult to understand how the S32 report has failed to identify the Stage 1 issues with the definition of Hazardous facilities as being highly relevant to this topic. It is also difficult to understand why the appropriate risk analysis as it applies to the storage and location of hazardous substances in identified natural hazard areas has not been undertaken.

17. Having reviewed further submissions and the S42A report FFNZ consider that there is room to significantly amend the rules framework to better reflect the policy intention and focus specifically on the location and storage of hazardous substances within the 1% AEP floodplain and flood ponding areas to adequately manage hazardous substances in the context of natural hazards. We are no longer requesting a deletion of the Policy but ask that the implementation methods better reflect the risk-based approach expressed elsewhere in the Policy direction of Chapter 15 and seek changes to Rule 15.4.3(a) D3A.
18. Mercury NZ Limited and the Waikato Regional Council (WRC) both made submissions seeking a more restrictive Policy, and in the case of WRC a policy that would cover other natural hazard areas. Federated Farmers further submitted in opposition to the Waikato Regional Council, stating (as explained) that the policy was inappropriate given the inadequate S32A evaluation provided and that any such policy needed to be cognisant of the direction provided in Stage 1. Further, we consider WRCs proposed addition of the defended area, high-risk flood hazard area, high-risk coastal hazard area (inundation and erosion), coastal sensitivity area, and areas subject to land instability, subsidence, and liquefaction risk to be unsupported by evidence and the necessary evaluative process for such a significant expansion of the policy. While we did not further submit on the Mercury NZ Limited amendments, we are supportive of the further submission [FS 3029.9] by Tata Valley Limited that in respect to the flood plain management area their amendments would be unnecessarily restrictive. Further, we consider that such a policy would fail to provide for a risk-based approach as necessitated by the Objective (15.2.1) and the WRPS, unreasonably restricting the storage of certain hazardous substances where the risk of doing so can be appropriately managed.
19. In terms of amending or replacing the notified policy we believe the submission by TaTa Valley Limited is sufficient but should be accompanied by a proper S32AA evaluation if accepted by the Hearing Panel. We agree with the reporting Planner and other submitters that the term “unacceptable hazard” is unusual wording and that for clarity the 1% AEP should be included in the title of the Policy and High-Risk Flood Areas, be included in the body of the Policy.
20. On this basis we request that the Hearing Panel adopt the amendment (a) recommended in the S42A report:

Policy 15.2.1.14 Hazardous substances located within the 1% AEP floodplain and flood ponding areas, and High-Risk Flood Areas

 - (a) Ensure that the location and storage of hazardous substances within the 1% AEP floodplain and flood ponding areas, including High Risk Flood Areas, are managed to prevent do not create an unacceptable hazard risk to people, property, infrastructure, or the environment.

21. I note the reporting Planner has made no s32AA evaluation, stating:

“The S32 report ‘Natural hazards and Climate Change’ (2020) evaluates this policy. No additional evaluation of the amended text under S32AA is required, because the S32 evaluation of the original text adequately covers and justifies the amendments now proposed for the purposes of clarification.”

22. In my view this is not correct. The S32 report lists Policy 15.2.1.14 in the “Provisions most appropriate” column of its flood risk policies table but makes no direct mention of hazardous substances in its “Effectiveness, Efficiency, Benefits & Costs” column. The only mention of the adverse effects of flooding in respect to hazardous substances in the S32 evaluation is on page 41 where it states:

“The effects of flooding include...transportation of hazardous substances... can result in contamination which can adversely affect human health.”

23. In my opinion this is not an adequate or meaningful evaluation of the “Effectiveness, Efficiency, Benefits & Costs” of a drafted provision that should be made through the S32 process.

24. To restate our position - we are broadly supportive of the amended policy set out in the S42A report but are asking the Hearing Panel direct council to undertake a proper S32AA evaluation to establish the most effective and efficient planning approach. We are not supportive of the proposed implementation method.

Rules 15.4 and 15.4.1 Flood Plain - Permitted activities

25. FFNZ support the S42A recommendation to retain 15.4.1 P1 as notified. The S42A report has not supported the submission by the Director General of Conservation [2108.15] which seeks to amend Rule 15.4.1 P1 to make construction of a new building in flood management areas a restricted discretionary activity. FFNZ supports the view of the reporting Planner that it is unnecessary to ensure a minimum floor level through a restricted discretionary activity status in accordance with Policy 15.2.1.12. We agree that there is no need to utilise a resource consenting process and that from a S32 perspective a restricted discretionary activity status is less efficient than what is proposed. We therefore support the S42A recommendation to reject submission 2108.15 by the Director General of Conservation and FS 3030.3 by Mercury NZ Limited.

15.4.1 - P4

26. FFNZ asked for the deletion of the words “without a floor” in P4 to provide for accessory buildings and farm accessory buildings that may require a floor to better meet operational or functional needs. Our view here is the same as expressed in respect to Policy 15.2.1.12. We acknowledge that the plan must give policy direction

to protecting people, property, and the environment, but consider that some property should be subject to a higher threshold of risk in a working agricultural environment. The S42A report cites the Waikato Regional Council submission which says, “by restricting buildings to those without a floor, the district plan is providing guidance as to the acceptable level of risk in this location”. In our view an acceptable level of risk would enable construction of farm buildings whether or not they are constructed on a concrete pad. As already discussed, these buildings are built for practical utility purposes in a rural working environment. Land users investing in these buildings often locate them where they have the most operational or functional need. . As a habitable building is not a functional building in terms of farming or growing but rather a building with the primary purpose of providing shelter, we consider that such a level of risk does need to be more carefully managed for a habitable building, hence the distinction requested. Farm utility buildings can cost a significant amount of money, farmers are no keener to have the building, or its contents end up down the river than anyone else is.

27. Horticulture New Zealand have also requested that Rule 15.4.1 P4 be amended by adding “non-habitable” in front of accessory building [2149.8] FFNZ supported this submission [FS 3030.29]. For the reasons discussed in respect to 15.2.1.12 we support the use of habitable and non-habitable buildings to differentiate between levels of risk. We therefore consider the addition of “non-habitable” would be a helpful addition to the rule.

15.4.1 – P6

28. In the case of low-risk structures where farm machinery or other property ancillary to a farming activity is stored FFNZ consider it is up to the land user to weigh the costs and benefits of investing in the functionality of their business against the potential loss of, or damage to, their own property. If there is concern of transferring risk to adjoining properties, we consider that Rural Zone development controls will ensure that appropriate spacing between buildings is maintained in line with the Policy direction provided in the Rural Zone chapter.
29. Our relief sought to P8 discusses the need to add an exemption to to P6 or another permitted activity rule to 15.4.1 P4.

15.4.1 – P7

30. FFNZ submitted in support of P7 along with Mercury NZ Limited [2053.] and Kainga Ora Homes and Communities [2094.27]. FFNZ agree with the S42A report that 15.4.1 P7 supports the enabling intent of 15.4.1 P1. Given our partial support of 15.4.1 P1 in our original submission and full support at the hearing we are also supportive of this rule.

31. Waikato Regional Council [2102.67] seeks that Rule 15.4.1 – P7 be deleted. They argue that the rule would allow “unlimited earthworks to enable the elevation of buildings above the floodplain depths as a permitted activity.” We agree with the S42A report that the proposed rule only applies to a residential platform so is not “unlimited” and is appropriate for the reasons discussed in 23. We therefore support the S42A recommendation to retain rule 15.4.1 – P7 as notified.

15.4.1 – P8

32. FFNZ considers the maximum filling volume of 100m³ and maximum cumulative volume of filling and excavation of 200m³ per site in the Rural Zone would be inadequate to enable the low-risk earthworks associated with normal farming activities. We understand this very low threshold is intentional, in paragraph 256 of the S42A report the reporting Planner states, “*the volume is set very low so that generally earthworks consent will be required as a restricted discretionary activity.*” As already discussed, it is likely that the definition for earthworks in Chapter 13 will be amended to the definition provided by the National Planning Standards. While providing for cultivation and putting in fence posts this will not cover a range of earthworks usually undertaken as part of a farming activity. I am advised by our members that the thresholds provided in P8 will not enable excavation of a farm track, or the benching required to get stable fence lines, or installation of water reticulation for stock drinking purposes. For these reasons I disagree with the S42A report that the national planning standards definition of earthworks will mean that normal farming activities will not be constrained by P8.
33. As already discussed in respect to 15.2.1.10 I support the S42A report when it says in paragraph 120 that “*farming is not one of the activities that the policy and associated rules are directed towards*”. However proposed rule 15.4.1 P8 is not consistent with that intention and by virtue of the very low thresholds will capture farming activities unnecessarily. The intention would be much better met by the relief we seek to rule 15.4.1 P6 which is to enable ancillary rural earthworks as a permitted activity. The adoption of our relief for rule 15.4.1 P6 would address our concerns with P8.

Rule 15.4.3 Flood Plain - Discretionary activities

34. For the reasons discussed in respect to rule 15.4.1 – P4 FFNZ support rule 15.4.3 D1 being retained as notified, conditional on the outcome of our relief sought for that provision.
35. With respect to D3 we sought council delete the rule. Horticulture New Zealand sought council adopt changes sought in Hort NZs submission to Stage 1 relating to hazardous substances and in the evidence of Ms. Wharfe to Hearing 8A and to amend the definition of hazardous facility in Chapter 13 Definitions. FFNZ further submitted [FS 3030.32] in support. The planning report opposes the relief stating at

paragraph 267 on page 77 that: *“Within the context of the revised framework for hazardous substances and “major hazardous facility” proposed by the Hearings Panel and the proposed Chapter 15 specific definition for “hazardous facility”, I consider the discretionary activity status is still appropriate. The policy direction is to ensure that the location and storage of hazardous substances within the 1% AEP floodplain and flood ponding areas do not create an unacceptable hazard to people, property or the environment.”*

36. FFNZ has been unable to find a definition for 'hazardous facility' proposed specifically for Chapter 15 and ask for further discussion on this matter at the hearing. If the reporting Planner is suggesting that the potential changes negotiated through the Stage 1 hearings can be applied to Chapter 10, with the notified version of the hazardous facility definition applied to Chapter 15, then we remind the Hearing Panel of the issues created by such a broad definition of hazardous facility which includes the use of hazardous substances. The use of hazardous substances is included in the hazardous facility definition, and by virtue of that, the proposed rules framework is both inconsistent with the Chapter 15 policy direction and the position of the reporting Planner - both of which are focused on location and storage not usage of hazardous substances.
37. The section 42A report does not appear to discuss our relief for 2147.46 which was to delete 15.4.3 D3. In 17.4 - Recommendations the S42A report rejects our submission to **Retain** Rule 15.4.3 unmodified. This is an error as we requested D3 be **deleted**. As the S42A report has not addressed our submission we ask that the hearing panel again consider the relief requested in our original submission.
38. As discussed in respect to Policy 15.2.1.14 we ask that an adequate 32AA evaluation is undertaken in respect to hazardous substances and hazardous facilities in natural hazard areas because there was no such evaluation in the S32 report.

Rule 15.5.1 High Risk Flood Area – Permitted Activities

39. Federated Farmers FS 3030.33 further submitted in support of Horticulture New Zealand [2149.12]. For the reasons discussed in respect to 15.4 and 15.4.1 we consider that a distinction between non-habitable and habitable buildings is appropriate. We continue to support this relief.

Rule 15.5.2 High Risk Flood – Restricted discretionary Activities

40. FFNZ oppose the recommendation of the hearing panel and continue to support our original submission point 2173.50 to amend 15.5.2 RD2. See discussion on habitable vs. non-habitable buildings in our discussion of 15.4.1.

Rule 15.5.4 High Risk Flood – Non-complying activities

41. FFNZ oppose the recommendation of the hearing report and continue to support our original submission point 2173.50 to amend 15.5.2 RD2. See discussion on habitable vs. Non-habitable buildings in our discussion of 15.4.1.

Rule 15.6.3 Defended Area - Discretionary activities

42. FFNZ oppose the recommendation of the hearing panel and continue to support our original submission point 2173.54 to amend 15.6.3 D1. See discussion on habitable vs. Non-habitable buildings in our discussion of 15.4.1.
43. With respect to D2 we consider that earthworks as defined under the National Planning Standards will provide for farming activities within 50m of a stop bank. We therefore support the recommendation of the hearing report regarding 15.6.3 D2, on condition that the definition of earthworks in Chapter 13 is amended to earthworks as defined under the National Planning Standards. Our position is different for earthworks on the flood plain as this hazard area covers a greater area of farmland and does not carry the same risk of undermining flood protection infrastructure that is present when undertaking earthworks next to a stop bank. I refer here not to the residual risk to land users' property or person due to overtopping or a breach but to the effect of the earthworks on the structural integrity of the stop bank.

General / Miscellaneous – Chapter 15 Provisions

44. The Waikato Regional Council have requested a new rule to include hazardous facilities as a discretionary activity in:
- 15.6.3 D5 – Defended Area (Residual Risk) 15.7.3 D5 – Coastal Sensitivity Area (Erosion) and Coastal Sensitivity Area (Open Coast) 15.8.3 D5 – Coastal Sensitivity Area (Inundation) 15.9.2 D10 – High Risk Coastal Hazard (Erosion) Area 15.10.2 D9 – High Risk Coastal Hazard (Inundation) Area.
45. Federated Farmers [FS3030.22] and Horticulture New Zealand [FS3027.43] opposed this submission.

46. Both Federated Farmers and Horticulture NZ do not accept the use of 'hazardous facility' as currently defined in the Proposed Plan. Hort NZ's and Federated Farmers respective positions on hazardous facilities are set out in their submissions to PWDP Stage 1.
47. Federated Farmers are supportive of the S42A in respect of the need to have different levels of risk across hazard areas. Overall, we oppose the submission from WRC and the partial support of it from expressed in the S42A report, including the suggestion that a restricted discretionary or discretionary activity status should be extended to coastal hazard areas.

Jesse Gooding
Regional Policy Advisor



Federated Farmers of New Zealand

