

Before an Independent Hearings Panel

The Proposed Waikato Regional Plan Change 1

IN THE MATTER OF the Resource Management Act 1991 (**RMA**)

IN THE MATTER OF the Proposed Waikato Regional Plan Change 1, Block 1 Hearings:
TOPIC - PART B – Outcomes
B5 FMUs, sub-catchments, targets and limits, priorities

**REBUTTAL EVIDENCE OF ELIZABETH KIM HARDY
ON BEHALF OF MIRAKA LIMITED**

Planning

Dated: 26 February 2019

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1. INTRODUCTION AND SUMMARY

- 1.1 My full name is Elizabeth Kim Hardy. My qualifications and experience are set out in my primary statement of evidence dated 15 February 2019. I have read the Environment Court's Code of Conduct for Expert Witnesses, and I agree to comply with it.
- 1.2 The scale of Freshwater Management Units (FMUs) as notified in Plan Change 1 and Variation 1 may not achieve the objectives of the National Policy Statement on Freshwater Management (NPSFM) and the Vision and Strategy for the Waikato River. Importantly the approach proposed misses the opportunity to deliberately define meaningful FMU areas, scope and scale whilst harnessing community support and ownership of the quality of the Waikato and Waipa River catchments.
- 1.3 My interpretation of the purpose of the FMUs as set out in the NPSFM is that the hybrid approach to FMUs and Sub-catchments proposed by Miraka is consistent with the NPSFM.

2. SCOPE OF REBUTTAL EVIDENCE

- 2.1 This statement of rebuttal evidence addresses certain matters raised in the primary evidence of:
- (a) Waikato Regional Council – Mr Matthew McCallum-Clark;
 - (b) Mercury Energy – Ms Gillian Crowcroft;
 - (c) Fonterra – Mr Gerard Willis;
 - (d) Genesis – Mr Richard Matthews;
 - (e) Fish and Game – Ms Helen Marr; and
 - (f) Department of Conservation (DOC) – Ms Deborah Kissick.
- 2.2 My rebuttal is focused specifically on the analysis and comments set out in these statements of evidence in support of the FMUs as proposed in Plan Change 1 and Variation 1, and supported in the section 42A report.

2.3 A number of these statements raise related issues and so this statement is structured to address the following issues rather than as a direct response to each statement of evidence:

- (a) Purpose of the FMUs in the NPS;
- (b) Practicality of FMUs; and
- (c) Interpretation of Objective C1 and the principle of 'eye on the prize'¹.

3. HYBRID FRESHWATER MANAGEMENT/SUB-CATCHMENT UNITS APPROACH

3.1 My primary statement of evidence at paragraph 1.5 states that

'..the Freshwater Management Unit (FMU) and sub-catchment boundaries require re-alignment to achieve more equitable water quality outcomes that balance the need to improve water quality with the potential impact on people and business. Re-alignment of these boundaries also presents an opportunity to achieve better community recognition and participation in catchment management.'

3.2 The statements of evidence set out in 2.1 (b) – (d) above all consider that the FMU boundaries as notified are appropriate. This is principally because the large area covered by each FMU supports the achievement of a "whole of river" approach to monitoring and accounting, is in keeping with the purpose of the NPSFM and is more practical.

3.3 In my opinion these outcomes can still be achieved within the hybrid FMU/Sub-catchment approach sought by Miraka for the reasons I have discussed below.

4. PURPOSE OF FMUS IN THE NPS

4.1 The NPSFM does not expressly state the purpose of FMUs so I consider that the best guidance can be obtained from the definition in the NPSFM:

'Freshwater management unit is the water body, multiple water bodies or any part of a water body determined by the regional council as the appropriate spatial scale for

¹ S42A report para 148

*setting freshwater objectives and limits and for freshwater accounting and management purposes.*²

4.2 In my opinion the definition of FMUs within the NPSFM is intentionally broad to enable the identification of management units that are appropriate to the particular resource management context so as to:

- (a) set freshwater objectives;
- (b) set freshwater limits;
- (c) for freshwater accounting purposes; and
- (d) for freshwater management purposes.

4.3 In my opinion all these factors need to be considered when setting the boundaries for the management units. The large area covered by each FMU proposed in PC1 and V1 misses the opportunity to address all four factors and take a broader RMA principled approach as set out in paragraph 6.8 of my primary statement.

4.4 The NPSFM does not have any firm direction on the area, scale and scope of the accounting and management practices and of the objectives and limits that can be set within these FMUs. This flexibility enables the area, scale and scope of each FMU to be set within the broader resource management context for each region and allows for the development of FMUs that are smaller and more homogenous than those proposed in PC1 and V1. For this reason, amongst others, I consider that the hybrid FMU/Sub-catchments proposed by Miraka will give effect to the NPS.

4.5 In his primary evidence, Mr Matthews (Genesis) outlines his support for retaining the FMUs as notified. This is on the basis that FMUs are for monitoring and accounting purposes and are consistent with the scale at which objectives and limits are set. I understand that limits are set at sub-catchment level and so the FMUs (as proposed in PC1) are in fact not consistent with the objectives and limits. I consider that FMUs covering a smaller area would be more consistent with the PC1 and V1 objectives and the NPSFM.

4.6 In addition, Miraka's hybrid approach would address the concern outlined by Mr McCallum-Clark (s42A author) that PC1 does not fully comply with the NPS since the values and uses are not clearly stated for each FMU and it is not clear what the targets and limits are for each FMU. Miraka's hybrid approach better aligns the management unit with the targets and limits since the sub-catchments become the FMUs.

² NPSFM page 8.

- 4.7 As I outlined above, there is nothing in the NPSFM that requires FMUs to be of the area, scale and scope proposed in PC1 and V1. I acknowledge that adopting the FMUs at the scale proposed in PC1 and V1 may lead to simplified monitoring and accounting. But I question the value of this monitoring and reporting to local communities that are concerned with how their practice change and day to day management outcomes are making a tangible difference to water quality. In other words larger FMUs may be administratively easy for the Council but may be less effective at achieving the objectives of PC1.
- 4.8 Given those views, I support the statement by Ms Marr on behalf of New Zealand Fish and Game where she states at paragraph 169 of her primary evidence that FMUs are a management tool *'that need to be set at a scale commensurate with the scale of resource use, resource pressure, or to be able to spatially manage particular values or pressures'*.
- 4.9 Similarly, I support the view of Ms Kissick on behalf of the Department of Conservation where she states that *'the ideal situation is that FMUs are identified at a scale that allows for local identification of values and therefore a more localised and specific framework to achieve these values can be set'*.

5. PRACTICALITY OF FMUS

- 5.1 Ms Crowcroft (Mercury Energy) supports the officer's recommendation to retain the FMUs at the area proposed and is concerned with the "practicality" of the accounting and management of 74 sub-catchments. The Miraka amendment offers a solution to this through the hybrid model (an amalgamation of the FMUs and Sub-catchments). This Miraka hybrid model would result in FMU/Sub-catchment areas that are large enough to support efficient management and accounting practices but small enough to provide meaningful data whilst not overwhelming Council resources.
- 5.2 I disagree with Ms Crowcroft's position that increasing the number of FMUs is unlikely to contribute to achieving improvement in water quality in the Waikato and Waipa catchments.
- 5.3 Limiting the number of FMUs as proposed in PC1 and V1 misses the opportunity to establish FMUs with objectives, limits, accounting and management purposes that are relevant and meaningful to local communities and aligned with the existing scale of landuse practice. As set out in paragraph 6.8 of my primary evidence the hybrid model

proposed by Miraka could more effectively achieve this outcome by establishing FMUs that comprise homogenous physical and community characteristics.

6. INTERPRETATION OF OBJECTIVE C1 AND THE PRINCIPLE OF ‘EYE ON THE PRIZE’

6.1 Mr Willis (Fonterra) agrees with the officer’s view that ‘*a sub-catchment approach (though having some benefits), risks not having an ‘eye on the prize’*. At paragraph 6.61 and following he states that Part C of the NPS (including Objective C1 and Policies C1 and C2):

...gives little room for sub-catchments to be treated differently in terms of regulatory framework that applies and the management of cumulative effects needed to ensure bottom of catchment objectives are met.

6.2 I agree with Mr Willis that Part C of the NPS requires integrated management of fresh water and use of land in whole catchments. However, I consider the main purpose of this objective is to ensure that land and water are managed in an integrated way. It is not possible to regulate freshwater quality without regulating land use. PC1 and V1 does exactly that and so achieves the main purpose of Part C of the NPS.

6.3 A subsidiary purpose of Part C is that the whole of a river catchment is taken into account. I also consider that this can be achieved with PC1 using smaller FMU areas such as the hybrid FMU/Sub-catchment areas proposed in the Miraka submission.

6.4 Bottom of catchment objectives can still be set and cumulative effects measured concurrent with the more homogenous FMUs proposed in the Miraka submission. This may require additional analysis from the Regional Council to set limits but does not seem insurmountable. As I noted above, the limits are already set based on a sub-catchment approach. A whole of catchment approach with smaller FMUs than those proposed in PC1 and Variation 1 is not a mutually exclusive proposition. The hybrid FMUs/Sub-catchments proposed by Miraka can still be achieved while maintaining an ‘eye on the prize’ as set out in the s42A report and support.

6.5 Limiting the FMUs to the area proposed in PC1 and V1 in order to keep an eye on the prize misses the opportunity to define the FMUs in a way that supports practice change and encourages community participation in and ownership of that change. Monitoring and understanding the whole catchment including cumulative effects can be achieved alongside the hybrid FMU/Sub-catchment areas proposed in the Miraka submission.

6.6 In my opinion, understating the whole of river outcomes should not be a constraining factor to establishing meaningful FMU boundaries that comprise comparable physical and community characteristics.

Kim Hardy

26 February 2019