

STATEMENT OF EVIDENCE

In the matter of the Resource Management Act 1991 (RMA)

And a submission and further submissions on Proposed Waikato Regional Plan Change 1 – Waikato and Waipā River Catchments (PPC1)

Submitter's Name: Hamilton City Council (HCC)

Submission Number: 74051

Hearing Topic: **Response to a question regarding the proposed wording of Policy 10a from the Hearing Panel during the Block 2 presentation on behalf of HCC on 8 July 2019**

Type of Evidence: Supplementary

Witness: Paul Stanley Ryan

Date: 5 August 2019

Summary statement

1. This evidence responds to Commissioner Robinson's question whether the proposed wording of Policy 10a set out in my Block 2 Primary Evidence sought to fetter the discretion of Waikato Regional Council to the extent that the proposed policy could be considered unlawful.
2. It acknowledges Policy 10a needs to be amended to make it lawful and proposes alternative wording to achieve this and to make explicit its alignment with Objective 4.
3. It concludes that the alternative wording of Policy 10a is the most appropriate for achieving PPC1's objectives.

Introduction

4. My full name is Paul Stanley Ryan. Please refer to my Rebuttal Evidence on "Part B – Outcomes: Overall direction and whole plan submissions" for my:
 - (1) Qualifications and experience;
 - (2) Endorsement of the content of HCC's submissions and further submissions, except where stated otherwise in my evidence;
 - (3) Agreement to comply with the Code of Conduct for Expert Witnesses in the Environment Court Practice Note 2014; and
 - (4) Reserved position with respect to the relief my Block 1 evidence seeks.
5. As for my Block 1 evidence, I reserve my position with respect to the relief this Supplementary Evidence seeks.

Abbreviations

6. Abbreviations and terms used in my evidence are explained in **Attachment A**.

Scope of evidence

7. My evidence responds to Commissioner Robinson's question about whether the proposed policy wording of Policy 10a included in my Block 2 Primary Evidence was lawful.

Supplementary evidence

Background to the Commissioner's question

8. HCC's submission seeks a new Policy 10a to secure the proposition in the s.32 Report and PPC1 that existing point source discharges will be allowed to run their course on their current terms until they expire, and only when those consents are renewed would those consented discharges be required to comply with PPC1.
9. The s.42A Report did not support this proposed policy.
10. In response, my Block 2 Primary Evidence sought the following alternative wording, which sought to overcome the basis for the s.42A Report authors' objection to the wording set out in HCC's submission:

Policy 10a: Review of conditions of existing point source discharge consents of regional significance

To recognise past progress made to improve point source discharges from regionally significant infrastructure and regionally significant industry that was consented as at notification of this plan, being 22 October 2016, the requirements of the Vision and Strategy will be incorporated into such consents when the current consents are renewed and the conditions of any such consent will not be reviewed under section 128(1)(b) of the Resource Management Act during the term of the existing consent.

The Commissioner's question and request

11. Commissioner Robinson asked HCC's Counsel to consider the following question and report back to the panel¹:

The power to review under 128(1)(b) is a separate statutory power. Is a policy purporting to fetter the exercise of that separate statutory power appropriate?

HCC's Counsel's response

12. In response, Ms Mackintosh has prepared a memorandum to the Commissioners that acknowledges that the proposed wording of Policy 10a in Paragraph 10 above "potentially fetters the statutory discretion of Waikato Regional Council to an unacceptable extent"².

Alternative wording of Policy 10a

13. I acknowledge that the drafting of Policy 10a requires amendment to ensure it does not offend the relevant legal principle referenced in Ms Mackintosh's memorandum.³

¹ Audio recording for day 37c at 34:35 minutes

² Paragraph 13 of the Memorandum dated 5 August 2019

³ Footnote 2 on p.4 of the memorandum

14. To avoid such offence, I seek the following alternative wording for Policy 10a. The following version tracks the changes made to the version that was included in my Block 2 Primary evidence.

Policy 10a: Review of conditions of existing point source discharge consents of regional significance

To recognise past progress made to improve point source discharges from regionally significant infrastructure and regionally significant industry that was consented as at notification of this plan, being 22 October 2016, and the staged approach to giving effect to the Vision and Strategy, the requirements of the Vision and Strategy will primarily be incorporated into such consents when the consents are renewed. Waikato Regional Council will take into account this policy when considering whether to initiate a review of conditions of such existing point source discharge consents under section 128(1)(b) of the Resource Management Act, where such a review is proposed prior to the expiry of the consent, and the conditions of any such consent will not be reviewed under section 128(1)(b) of the Resource Management Act during the term of the existing consent.

15. Ms Mackintosh has advised me that this alternative wording will not be an unacceptable fettering of Waikato Regional Council's discretion.

Recognition of the "staged approach"

16. Addition to Policy 10a of the words, "*and the staged approach to giving effect to the Vision and Strategy*", does not change the effect of the proposed policy. However, it makes explicit a purpose of the Policy, which is referred to in my Block 2 Primary Evidence⁴.
17. These additional words also make explicit Policy 10a's alignment with PPC1's Objective 4⁵ and thereby provide clearer guidance to decision-makers

Section 32 evaluation

18. Table 5 in Attachment B to my Block 2 Primary Evidence sets out a s.32 evaluation of Policy 10a. That evaluation concludes the addition of Policy 10a will make the policy framework more appropriate to achieving PPC1's objectives, and therefore the most appropriate.
19. For the following reasons, the revised wording of Policy 10a set out in Paragraph 14 above is superior to the wording set out in my Block 2 Primary Evidence:
- (1) It overcomes the latter's legal deficiency;
 - (2) Gives clearer guidance to decision-makers regarding the purposes of the policy; and

⁴ Table 5 in Attachment B to my Block 2 Primary Evidence, under "a - Relevance"

⁵ The notified version of Objective 4 is: "*Objective 4: People and community resilience: A staged approach to change enables people and communities to undertake adaptive management to continue to provide for their social, economic and cultural wellbeing in the short term while: a. considering the values and uses when taking action to achieve the attribute^ targets^ for the Waikato and Waipa Rivers in Table 3.11-1; and b. recognising that further contaminant reductions will be required by subsequent regional plans and signalling anticipated future management approaches that will be needed to meet Objective 1*".

- (3) Makes explicit Policy 10a's alignment with PPC1's Objective 4.

Conclusion

20. I conclude, therefore, that the revised wording of Policy 10a set out in Paragraph 14 above is the most appropriate to achieve PPC1's objectives.

Relief sought

21. I seek for inclusion in PPC1 of Policy 10a as set out in Paragraph 14 above.

Paul S Ryan

HCC reference: D-3041446

Attachments

- Attachment A: Abbreviations and Glossary
Attachment B: Relief Sought
Attachment C: References

Attachment A

Abbreviations and Glossary

HCC	Hamilton City Council
PPC1	<i>Proposed Waikato Regional Plan Change 1 – Waikato and Waipā River Catchments</i>
RMA	<i>Resource Management Act 1991</i>
"S" or "s"	Section
s.32 Report	<i>Proposed Waikato Regional Plan Change 1 – Waikato and Waipā River Catchments: Section 32 Evaluation Report.</i> Waikato Regional Council. (2016). Accessed at: https://www.waikatoregion.govt.nz/assets/WRC/Council/Policy-and-Plans/HR/Dip-your-toes/Section32.pdf . ⁶
s.42A Report	<i>Section 42A Report: Proposed Waikato Regional Plan Change 1 - Waikato and Waipā River Catchments: Block 2: Parts C1-C6: Policies, Rules and Schedules (most).</i> Prepared for Waikato Regional Council by Matthew McCallum-Clark, Adele Dawson, Felicity Durand, and Liz White (Incite) and Urlwyn Trebilco, Naomi Crawford, Alana Mako and Ruth Lourey (Waikato Regional Council). (Released 5 April 2019). Document # 13915005.

⁶ HCC reference: D-2946883

Attachment B

Relief Sought

22. I seek for Policy 10a to be included in PPC1 as follows:

Policy 10a: Review of conditions of existing point source discharge consents of regional significance

To recognise past progress made to improve point source discharges from regionally significant infrastructure and regionally significant industry that was consented as at notification of this plan, being 22 October 2016, and the staged approach to giving effect to the Vision and Strategy, the requirements of the Vision and Strategy will primarily be incorporated into such consents when the consents are renewed. Waikato Regional Council will take into account this policy when considering whether to initiate a review of conditions of such existing point source discharge consents under section 128(1)(b) of the Resource Management Act, where such a review is proposed prior to the expiry of the consent.

23. This relief relies on the following submission points for the scope of these changes:

- (1) HCC: 74051-PC1-10259; and
- (2) The part of HCC's submission that seeks "any other similar, alternative or consequential relief".

Attachment C

References

- Hamilton City Council. (2 March 2017). Submission by Hamilton City Council on Proposed Waikato Regional Plan Change 1 – Waikato and Waipā Catchments.⁷
- Mackintosh, Marianne. (5 August 2019). Memorandum on behalf of Hamilton City Council in response to questions from the Independent Hearing Commissioners regarding Block 2.
- Ryan, Paul Stanley. (26 February 2019). Rebuttal Evidence on PPC1 - Part B – Outcomes: Overall direction and whole plan submissions⁸
- Ryan, Paul Stanley. (30 April 2019). Primary Evidence on PPC1 - Block 2.⁹
- Waikato Regional Council. (2016). *Proposed Waikato Regional Plan Change 1 – Waikato and Waipā River Catchments*. Accessed at: <https://www.waikatoregion.govt.nz/assets/WRC/Council/Policy-and-Plans/HR/ReadProposedPlan/Final-PlanChange1-with-insert-of-withdrawal.pdf>
- Waikato Regional Council. (2016). *Proposed Waikato Regional Plan Change 1 – Waikato and Waipā River Catchments: Section 32 Evaluation Report*. Accessed at: <https://www.waikatoregion.govt.nz/assets/WRC/Council/Policy-and-Plans/HR/Dip-your-toes/Section32.pdf>.¹⁰
- Waikato Regional Council. (Released 5 April 2019). *Section 42A Report: Proposed Waikato Regional Plan Change 1 - Waikato and Waipā River Catchments: Block 2: Parts C1-C6: Policies, Rules and Schedules (most)*. Prepared for Waikato Regional Council by Matthew McCallum-Clark, Adele Dawson, Felicity Durand, and Liz White (Incite) and Urlwyn Trebilco, Naomi Crawford, Alana Mako and Ruth Lourey (Waikato Regional Council). Document # 13915005.¹¹

⁷ HCC reference: D-2361677

⁸ HCC reference: D-2900623

⁹ HCC reference: D-2948309

¹⁰ HCC reference: D-2946883

¹¹ HCC reference: D-2934127