

BEFORE THE WAIKATO REGIONAL
COUNCIL HEARING COMMISSIONERS

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER Proposed Plan Change 1 to the Waikato Regional Plan and
Variation 1 to that Proposed Plan Change: Waikato and
Waipā River Catchments

Opening Legal Submissions on behalf of the Director-General of Conservation

Dated: 20 March 2019

Block 1 Hearings

Submission Number: 71759

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MAY IT PLEASE THE COUNCIL HEARING COMMISSIONERS:

Summary of the Director-General of Conservation's Position

1. The Director-General of Conservation (the **Director-General**) is encouraged by the direction of the Proposed Plan Change 1 to the Waikato Regional Plan, and Variation 1 to that Proposed Plan Change, for the Waikato and Waipā River Catchments (**Plan Change 1**) and is generally supportive of the intent of Plan Change 1 to restore and protect the water quality in the Waikato and Waipā Rivers. Indeed, a great majority of the Director-General's Submission points either support, or support with requested amendments, the proposed provisions of Plan Change 1.
2. Te Ture Whaimana - Vision and Strategy – is the primary direction setting document for the Waikato and Waipā Rivers. The legislative framework behind the Vision and Strategy reinforces this. Ultimately, Plan Change 1 must give effect to the Vision and Strategy.
3. The Director-General accepts that Plan Change 1 is likely to be the first of many plan changes to come on the journey toward achieving Te Ture Whaimana. That said, and subject to any scope issues, this should not limit the necessary water quality improvements required in Plan Change 1 to give effect to Te Ture Whaimana.

Scope of Legal Submissions

4. These legal submissions will cover the following matters:
 - (a) The Director-General's interest in Plan Change 1
 - (b) Expert Witnesses (Block 1)
 - (c) Legal Framework
 - Te Ture Whaimana – Vision and Strategy for the Waikato River 2008,

- Briefly, the Resource Management Act 1991 as it relates to the Vision and Strategy,
 - Briefly, New Zealand Coastal Policy Statement 2010,
 - Briefly, National Policy Statement for Freshwater Management 2014 (updated August 2017)
- (d) Director-General’s Submissions and Relief Sought
- (e) Other matters
- (f) Conclusion

Director-General’s Interest in Plan Change 1

5. The Director-General is the administrative head of the Department of Conservation (**the Department**).¹ He has all powers as are reasonably necessary and expedient to enable the Department to perform its functions set out in s 6 of the Conservation Act 1987. Under s 6, the Department’s functions include: to preserve so far as is practicable all indigenous freshwater fisheries, and to advocate the conservation of natural resources generally.²
6. Relevantly, ‘conservation’ means, in s 2 of the Conservation Act, *‘the preservation and protection of natural and historic resources for the purpose of maintaining their intrinsic values, providing for their appreciation and recreational enjoyment by the public, and safeguarding the options of future generations.’* And, relevantly, ‘natural resources’, also for the purpose of the Conservation Act, means *‘plants and animals of all kinds, and the air, water and soil in or on which any plant or animal lives’*.³ I make mention of these definitions given the similarities in the wording used in both the Vision and Strategy and conservation legislation.

¹ Refer s 52 Conservation Act 1987 (CA)

² Refer s 6(a) and (c) CA

³ Refer s 2 CA. Also ‘preservation’ in relation to a resource means *‘the maintenance, so far as is practicable, of its intrinsic values’*. ‘Protection’ in relation to a resource means *‘its maintenance, so far as is practicable, in its current state; but includes restoration to some former state and its augmentation, enhancement, or expansion’*.

Expert Witnesses

7. The Director-General will call the following expert witnesses in hearing block 1:

(a) **Ms Kate McArthur.** Ms McArthur holds degrees in science, ecology and natural resource management. She is the Practice Leader -Water, with the Catalyst Group, an independent environmental consultancy. Ms McArthur has 18 years post graduate experience working in the field of freshwater resource management.

Ms McArthur's evidence focuses on the Waikato-Waipā Catchments including values and uses, ecosystem health and associated values in the Rivers, as well as water quality attributes and targets, relationship between values and attributes, contaminants and appropriate water quality attributes for Plan Change 1.

(b) **Ms Helen Kettles.** Ms Kettle's is a Technical Advisor-Marine Ecosystems for the Department and has held this role since 2000. She holds degrees for Bachelor of Science and Masters in Science with First Class Honours both in Biological Sciences.

Ms Kettle's evidence focuses on ecological values of estuaries generally, including the Waikato River Estuary and on managing adverse effects of upstream activities on the Waikato River Estuary.

(c) **Dr Hugh Robertson.** Dr Robertson is a Principal Science Advisor-Freshwater in the Aquatic Unit of the Department. Dr Robertson holds a Doctor of Philosophy in wetland ecology and a Bachelor of Science Honours. He has 18 years' experience in the field of

freshwater ecology in New Zealand and Australia, in both a research and wetland management capacity.

Dr Robertson's evidence focuses on protecting and restoring wetlands and the significance of wetlands within the Plan Change 1 area, including Whangamarino Wetland. Dr Robertson recommends a Freshwater Management Unit (FMU) for the Whangamarino Wetland. Dr Robertson will discuss the ecosystem health, intrinsic values and uses of wetlands as well as objectives, attributes and numeric targets for wetlands.

- (d) **Dr Ngaire Phillips.** Dr Phillips holds a Doctor of Philosophy in Environmental Science, Master of Science with First Class Honours, and a Bachelor of Science (Zoology). Dr Phillips has 30 years' experience in Freshwater Biology and Aquatic Ecology.

Dr Phillip's evidence focuses on shallow lakes within the Waikato-Waipā catchments, including values and the significance of these lakes. Her evidence will also cover lakes in terms of current values and ecological condition, restoration potential of shallow lakes and concerns with the approach taken in Plan Change 1 to manage lakes, as well as recommendations to address the appropriate management of shallow lakes.

- (e) **Ms Deborah Kissick.** Ms Kissick is a Planner with Perception Planning, a resource management consultancy based in Taupo. Ms Kissick holds a Bachelor of Science majoring in Geography with a specialisation in environmental science. She has nine years' experience as a planner.

Ms Kissick's evidence focuses on the relevant statutory planning instruments including the Visions and Strategy, the overall direction of Plan Change 1 in terms of values and uses, objectives, water quality targets and limits, FMUs, priority areas and sub-catchments

Legal Framework

Te Ture Whaimana – Vision and Strategy for Waikato and Waipā Rivers

8. Counsel refers to the legal submissions of Mr Ferguson, on behalf of the Waikato and Waipā River Iwi, and his analysis of the context and framework of Te Ture Whaimana set out in those submissions. I do not intend to repeat that analysis in these submissions, but I do wish to note the following points:
 - a. The overarching purpose of the settlement that sits behind the Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010⁴ (**the River Act**) is to restore and protect the health and wellbeing of the Waikato River for future generations.⁵
 - b. The purpose of the River Act is, among other purposes, to recognise the significance of the Waikato River to Waikato-Tainui and to recognise the Vision and Strategy for the Waikato River.⁶
 - c. As set out in s 5 of the River Act, the Vision and Strategy is intended by Parliament to be the primary direction setting document for the Waikato River and activities within its catchment affecting the Waikato River.
 - d. Parliament's direction in s 5 is reinforced: in s 11 of the River Act where the Vision and Strategy is deemed to be part of the Waikato Regional Policy Statement without a Schedule 1 RMA process; in s 12 where the Vision and Strategy prevails over any inconsistent provision in a National Policy Statement or in the New Zealand Coast Policy Statement and in s 13(4)

⁴ Also relevant is Ngaati Tuwharetoa, Raukawa, and Te Arawa River Iwi Waikato River Act 2010 and Nga Wai o Maniapoto (Waipa River) Act 2012, noting these Acts contain similar/identical provisions to those contained in the River Act.

⁵ Refer s 3 of the River Act.

⁶ Refer s 4 of the River Act

where every local authority must review its regional or district plan to see whether it gives effect to the Vision and Strategy. And, if the plan does not give effect to the Vision and Strategy, local authorities must amend that plan to ensure that it does. Plan Change 1 is a plan captured by this requirement.

Resource Management Act and relationship to the Vision and Strategy

9. Counsel concurs with Mr Milne, Counsel for Waikato Regional Council, where he states the Vision and Strategy is a very powerful document that holds a unique place in the hierarchy of the RMA instruments.⁷
10. Counsel refers to both Mr Milne and Mr Ferguson's legal submissions in terms of the discussions in those submissions on the relationship between the RMA and the Vision and Strategy. At paragraph 34 of Mr Milne's legal submissions he states (with reference to *Puke Coal Ltd v Waikato Regional Council*⁸) that: 'for activities within the catchment subject to the Vision and Strategy, it is no longer sufficient for an applicant to demonstrate that adverse effects are avoided, remedied, or mitigated. Instead, an applicant must now demonstrate that the application will result in some positive benefit contributing to the restoration of the Waikato River...' And, at paragraph 36 Mr Milne concludes that: 'the Puke Coal decision requires a major change to the way in which resource consent applications within the Waikato River catchment (as defined) are assessed ...the applicant would need to show that, in proportion to the impact of the proposal, there was a real benefit to the river catchment'. Counsel agrees with Mr Milne.
11. The obligation in s 13(4) of the River Act requiring Plan Change 1 to give effect to the Vision and Strategy is discussed in Mr Ferguson's legal submissions. At paragraph 31 Mr Ferguson states that the Panel must identify the objectives of the Vision and Strategy relevant to Plan Change 1 by paying careful

⁷ Refer para 18 of legal submissions for Waikato Regional Council

⁸ [2014] NZEnvC 223, Smith EJ, 23 October 2014

attention to how those objectives are expressed; must consider how the relevant objectives are to be given effect to and, after this analysis, if ambiguity remains then guidance must be sought to the interpretation of the Vision and Strategy. Counsel concurs with Mr Ferguson.

New Zealand Coastal Policy Statement 2010 and the National Policy Statement Freshwater Management

12. The New Zealand Coastal Policy Statement 2010 (NZCPS), which contains policies to achieve the purpose of the RMA in relation to the coastal environment of New Zealand, is to be applied by persons exercising functions and powers under the RMA. Regional Policy Statements, Regional Plans and District Plans must give effect to the NZCPS.
13. The National Policy Statement for Freshwater Management 2014 (updated August 2017) (NPSFM) recognises Te Mana o te Wai which looks at the integrated and holistic wellbeing of a freshwater body. It provides for the mauri of the water by focusing on the health of the environment, the health of the water body and the health of the people. The NPSFM *‘sets out objectives and policies directing local government to manage water in an integrated and sustainable way, while providing for economic growth within set water quantity and quality limits.*⁹ Similar to the NZCPS, persons exercising functions and powers under the RMA must also give effect to the NPSFM.
14. The requirement for Plan Change 1 to give effect to the NZCPS and NPSFM is subject to s 12 of the River Act – the Vision and Strategy prevails over any inconsistent provisions in the NZCPS and NPSFM.

Giving effect to the Vision and Strategy

15. In their oral submissions Mr Ferguson (and Mr Beverly for the Waikato River Authority) referred to the recent Supreme Court decision of Ngai Tai Ki

⁹ NPSFM – Preamble at page 4.

Tamaki Tribal Trust v Minister of Conservation¹⁰ when discussing what it means to give effect to the Vision and Strategy.

16. While this decision stems from judicial review proceedings considered in the context of the Conservation Act, it does, in my submission, provide the Hearing Panel with useful guidance on what the phrase ‘give effect to’ means in practice.
17. By way of background, the judicial review proceedings related to two decisions by the Minister of Conservation to grant guiding concessions on Rangitoto and Motutapu Islands. Of significant importance in the Ngai Tai case is the requirement in s 4 of the Conservation Act, which requires the Conservation Act¹¹ to be so interpreted and administered as to give effect to the principles of the Treaty of Waitangi.
18. Ngai Tai Ki Tamaki Tribal Trust (Ngai Tai) claimed that, by granting the concessions, the Minister failed to actively protect their Treaty interests as is required under the Treaty principle of ‘active protection’ of Maori interests; that concession opportunities on the Islands should be reserved to iwi to ensure their economic position, and that s 4 imposed on the Crown a duty to actively protect their economic interests.
19. The High Court held that the Minister’s delegate erred in law by saying that there was no basis for preferential entitlement under relevant legislation and planning documents, and by determining that economic benefits are not something that can be taken into account. However, the High Court went on to say that this error in law was not sufficient to conclude that the Minister’s delegate did not give effect to the principles, because the term or duration of the concession was limited to 5 years enabling a partnership between Ngai Tai and the concessionaire, Fullers. The Court of Appeal upheld the High Court’s decision.

¹⁰ [2018] NZSC 122 [14 December 2018]

¹¹ Reference to Act in s 4 includes those Acts listed in Schedule 1 of the Conservation Act

20. The Supreme Court overturned the Court of Appeal decision by concluding that:
- a. The obligation on the Department is to give effect to the Treaty principles in its administration of the Conservation Act,¹²
 - b. Section 4 requires more than procedural steps. Enabling iwi/hapu to reconnect to their ancestral land by taking up opportunities on public conservation land is one way the Crown can give practical effect to Treaty Principles,¹³
 - c. Section 4 does not exist in a vacuum. There will be other relevant factors to consider,¹⁴
 - d. In applying s 4 the Minister must, so far as possible, apply the relevant statutory and legal considerations in a manner that gives effect to relevant Treaty principles,¹⁵
 - e. Section 4 is **not trumped** by other factors, **nor is s 4 to be balanced against them**. What is required is a process under which meeting of other statutory or non-statutory objectives is achieved to the extent that this can be done consistently with s 4, in a way that best gives effect to relevant Treaty principles¹⁶.
21. In my submission, the *Ngai Tai* decision illustrates the correct approach to applying the requirement in s 13(4) of the River Act for Plan Change 1 to give effect to the Vision and Strategy. In considering the *Ngai Tai* decision alongside the *Puke Coal* decision, ensuring benefits to the Waikato (and Waipā) Rivers, as the Vision and Strategy requires is, in my submission, akin to actively protecting iwi interests, being a Treaty principle that must be given effect to.

¹² Refer para 48

¹³ Refer para 52

¹⁴ Refer para 54

¹⁵ Refer para 53

¹⁶ Refer para 54

22. Section 12 of the River Act provides that the Vision and Strategy prevails over any inconsistent provision in a national policy statement or in the NZCPS. So, RMA statutory instruments, such as the NZCPS and the NPSFM, can (and must) be applied to Plan Change 1, but only to the extent that such application is consistent with the Vision and Strategy. In the Concise Oxford Dictionary ‘consistent’ means *‘compatible or in harmony, not contradictory’*.
23. In my submission, for Plan Change 1 to give effect to the Vision and Strategy, the provisions proposed in the Plan must be in harmony or compatible with the Vision and Strategy and the overarching intent of restoration and protection of the River and all its values and uses as expressed in the Vision and Strategy.

Director-General’s Submissions and Relief Sought

24. I do not intend to traverse in these legal submissions the full breadth and length of the Director-General’s Submission (**the Submission**). Rather, I intend to touch on the main points of the Submission.

Values and Uses for the Waikato and Waipā Rivers

25. While the Director-General supports the values and uses identified in Plan Change 1, this support is subject to amendments as requested in the Submission. In order to give effect to the NPSFM (and Vision and Strategy), Waikato Regional Council (**the Council**) should set values for each Freshwater Management Unit (FMU) in order to then set limits and targets to achieve the objectives. The values, and then the objectives, will guide the outcomes and so, in my submission, it is essential that limits and targets are set in order to achieve these outcomes.

26. The Director-General seeks that the values for ecosystem health be retained with amendments¹⁷ including recognising the significance of individual lakes, wetlands and rivers, within the Plan Change 1 area, that are of regional, national or international significance. The Director-General also seeks that Plan Change 1 expand on the broadly defined ecosystem health values, so that it provides for ecological health, ecosystem processes and biological diversity at specific locations¹⁸.
27. Intrinsic values for natural form and character should be retained but expanded to include lakes, wetlands and the coastal environment, in terms of the effects upstream land uses has on the coastal environment, as well as rivers. To achieve this, the Director-General seeks the range of attributes that contribute to natural character are identified and recognised in Plan Change 1.¹⁹ And in terms of use values for Wai tapu, Mahinga kai, Human health for recreation and transport and Tauranga waka, the Director-General seeks that these use values are expanded to include lakes, wetlands, the coastal environment as well as rivers.
28. Ecosystem health is a compulsory national value under the NPSFM and applies across all waterbodies and FMUs in the Waikato-Waipā catchments. Without further identification of critical characteristics that comprise ecosystem health spatially across all the FMUs, or the inclusion of relevant water quality attributes and targets specifically to support these characteristics, Ms McArthur considers there is a significant risk Plan Change 1 will not deliver water quality outcomes that will achieve ecosystem health across all catchments, waterbodies and freshwater ecosystems of the Waikato-Waipā catchments²⁰. In my submission, this would not give effect to the overarching intent of the Vision and Strategy – restoration and protection.

¹⁷ As listed on pages 27 & 28 of the Director-General's Submission (the Submission)

¹⁸ Refer p 29 of the Submission

¹⁹ Refer p 31 of the Submission

²⁰ Refer para 35 Ms McArthur EinC

29. In terms of intrinsic values and uses for wetlands, Dr Robertson recommends that ecosystem health include reference to natural ecological functioning of river, wetland, lake and estuarine ecosystems.

Freshwater Management Units

Whangamarino Wetland

30. The Director-General seeks a separate FMU for the Whangamarino Wetland (WW). The need for a separate FMU for WW is because of:
- a. The international significance of the wetland (Ramsar Site),
 - b. The risk of irreversible degradation of significant wetland values,
 - c. The need for a different suite of water quality attributes to protect the significant values of the wetland,
 - d. The extent or sufficiency of data available to define current state of a WW FMU, and
 - e. The existing sub-catchment targets in Plan Change 1 will not achieve the outcomes sought for the wetland.
31. WW comprises extensive freshwater wetlands, is fed by the Pungarehu Stream, Whangamarino and Maramarua Rivers and also receives inflow from Lake Waikare via the Pungarehu Canal.²¹
32. WW is internationally significant because of its large size, the relatively intact (indigenous dominated) ecological sequences of marsh, swamp, fen, and bog (being the main wetland types), and the diversity of aquatic habitats it provides for indigenous species. As one of the best remaining and largest examples of this wetland type in New Zealand, WW contains approximately 1812 ha of bog habitat, 1908 ha of fen habitat and 2249 ha of swamp habitat.²²

²¹ Refer para 56 Dr Robertson EinC

²² Ibid, refer para 61 and 65

33. It has been identified through site assessment, photographs, monitoring data and catchment modelling that WW is over-allocated in terms of water quality (particularly nutrients, sediment, clarity).²³ Recent monitoring of sediment concentrations and loads indicate annual sediment load from the Pungarehu Canal (which has inflows into WW) in the order of 27,000 T/yr, and that nutrient concentrations and nutrient and sediment loads are very high compared to other sites in New Zealand and the Waikato²⁴.
34. The water quality issues that adversely affect WW (including sediment and phosphorus) are not adequately addressed in Plan Change 1. Targets for nitrogen in river sub-catchments do not, in my submission, give effect to the Vision and Strategy or protect the significant values of WW. Counsel notes s 6 of the River Act defines ‘Waikato River’ with reference to SO plan 409144 (attached to these submissions). This definition expressly includes lakes and wetlands within the area marked “A” on SO plan 409144. WW is located in the area where A is marked on the plan. With wetlands (and lakes for that matter) having been specifically included in the definition of the Waikato River, I submit the requirement to give effect to the Vision and Strategy applies to WW, other wetlands, and lakes, within the area defined on the SO plan.
35. There is sufficient technical information to establish water quality targets for a specific WW FMU. This proposed FMU is mapped in Appendix 3 of Dr Robertson’s evidence, and includes a number of sub-catchments within the Lower Waikato FMU. Appendix 5 of Dr Robertson’s evidence contains proposed attributes for a WW FMU and Appendix 6 outlines numeric targets.

Other Wetlands

36. Dr Robertson’s evidence, at paragraph 90, refers to an article on regional and global concerns over wetlands and water quality. This article notes that water

²³ Ibid, refer para 106

²⁴ Ibid, refer para 109 - 110

quality in many stream catchments and river basins are severely impacted by nutrient enrichment as a result of agriculture.

37. Although the Officers Section 42A Report states the Waikato Regional Plan (WRP) sufficiently manages wetlands, Ms Kissick evidence explains that the WRP does not consider the effects of contaminants and degraded water quality on wetlands, or on their ecosystems, habitats, natural character or natural functions²⁵.
38. Changes to nutrient loads in wetlands increases soil nutrient concentrations, causing shifts in species composition because species vary in their ability to cope with different nutrient availabilities. Increased levels of soil total nitrogen (and total phosphorus) were found to correlate with an increase in exotic plant species richness indicating the susceptibility of wetlands to elevated nutrients.²⁶ Furthermore, nutrient enrichment (or eutrophication) dramatically alters vegetation composition, health and habitat value in wetlands, and is arguably second to hydrological disturbance as a cause of loss of wetland condition in New Zealand.²⁷
39. The Council Report on the State of the Waikato catchment²⁸ noted, for wetlands, that decline in habitat and water quality due to excess run-off of sediment and nutrients was a key pressure and that this occurred through inappropriate use of surrounding land, such as poorly managed farming practices causing sediment and/or fertiliser runoff, or by loss of vegetation, through harvesting of plantation forest close to wetlands, in the surrounding catchment.²⁹
40. Given the adverse effects of nutrient enrichment on wetlands, I submit it is essential for Plan Change 1 to take account of and address the effects that

²⁵ Refer para 306 Ms Kissick EinC

²⁶ Refer para 93 and 94 of Dr Robertson's EinC

²⁷ Ibid, Refer para 96

²⁸ The health of the Waikato River and catchment (Environmental Waikato 2008)

²⁹ Ibid, refer para 103

contaminants and degraded water quality has on wetlands in order to give effect to the Visions and Strategy, specifically Objective (h) – recognise the Waikato River is degraded and should not absorb further degradation as a result of human activities.

Lakes

41. The Director-General sought FMUs for each individual lake and its catchment to ensure water quality monitoring of each lake accurately reflects the individual lake and that lake catchments are appropriately represented, prioritised and managed. I discuss this relief in further detail below.
42. The Lake FMU classification system proposed in Plan Change 1 appears to be based solely on geomorphological lake information processes and does not account for other variables that drive the difference between lakes. Dr Phillips considers this approach to be overly simplistic, as it groups lakes that are extremely diverse in terms of their physical characteristics. Such variabilities are reflected in differences in lake structure and function, which in turn influences ecological systems and, ultimately, management needs.³⁰
43. Most lakes within the Waikato and Waipā River catchments are significantly impacted by land use, drainage, vegetation clearance, sediment and nutrient inputs and the impacts of invasive flora and fauna. As a result of declining water quality, many lakes have lost their macrophyte communities and some have flipped to a new state dominated by phytoplankton.³¹
44. In Dr Phillip’s opinion, Plan Change 1 in its current form does not provide a coherent or holistic management framework, as required by Te Mana o te Wai, that is clearly focused on Waikato-Waipā Lakes. Further refinement and expansion of the number of Lake FMU’s, using a more robust scientific

³⁰ Refer para 78 of Dr Phillips EinC

³¹ Ibid, refer paras 18-19

approach, is required.³² I discuss this further toward the end of my submissions.

Objectives

45. In his Submission the Director-General seeks:
- a. A new objective which safeguards ecosystem health and the health of indigenous species,
 - b. A new objective that recognises and provides for the values of freshwater fish species identified in Appendix C of the Submission,
 - c. In terms of Objective 1,
 - i. that this objective is retained and amended to focus on restoration and protection of water quality, rather than the discharge of contaminants, in order to give effect to the Vision and Strategy,
 - ii. that water quality targets for lakes are raised to ensure long-term restoration and protection of water quality is achieved,
 - d. That Objective 2 is retained and amended to recognise the benefits to the environment resulting from the restoration and protection of water quality in the Waikato and Waipā River Catchments. And that the word ‘continue’ is removed from Objective 2.
 - e. That Objective 3 is retained and amended:
 - i. So that 10-year targets for water quality improvement are set using existing available expertise and models to achieve a 20% improvement within 10 years,
 - ii. To include the discharge of contaminants from point source discharges in any allocation regime so the full extent of contaminant discharges affecting water quality are appropriately managed.
 - f. That Objective 4 is retained and amended as follows:
 - i. Removal of the term ‘continue’,

³² Ibid, refer para 22 and 24v

- ii. Implementing an allocation regime for contaminants based on current information and knowledge with the ability to amend this regime as more information becomes available,
 - iii. That intrinsic values are recognised and provided for,
 - iv. Implement greater changes to discharge of contaminants in the short-term through an allocation regime that recognises land type and achieves greater short-term improvement in water quality.
- g. That Objective 5 is retained and amended so intrinsic values are recognised and provided for and to clarify that intrinsic values are not considered as impediments under subsection b of Objective 5.
- h. That an Objective relating to WW and the significant values of all wetlands is included in Chapter 3.11 of Plan Change 1 for the reasons discussed above.
46. In terms of the proposed new Objectives, the Officers Section 42A Report states these are already provided for within either Plan Change 1 or the WRP, specifically Objective 3.1.2. However, as stated by Ms Kissick, Objective 3.1.2 addresses how water bodies should be managed and lists what the management of water bodies should be achieving. While this captures some of the matters raised in the Submission, Ms Kissick's evidence confirms that it does not achieve the outcomes sought in the proposed new Objectives.³³
47. Ms Kissick evidence³⁴ refers to Objective 3.14 of the Waikato Regional Policy Statement (**WRPS**). This objective requires the mauri and identified values of freshwater bodies are maintained or enhanced by safeguarding: ecosystem processes; indigenous species habitats; outstanding values of identified outstanding water bodies and significant values of wetlands. This objective also states that there will be variable management responses required for different catchments of the region.

³³ Refer para 219-220 of Ms Kissick EinC

³⁴ Ibid at para 224-225

48. Furthermore, Policy 8.3 of the WRPS requires a reduction in sediment from human based activities, as well as an overall reduction in identified contaminants³⁵.
49. Ms Kettles evidence confirms there is sedimentation at the Waikato River Estuary and that turbidity in the estuary was reported in the State of the Environment Report³⁶ as being ‘unsatisfactory’ 75% of the time. Ms Kettles states that seagrass is a good indicator species for impacts from upstream activities on the health of estuaries. Appendix A of Ms Kettles evidence shows the decline in seagrass species from 1.8ha to 0.8ha in the period from 2002-2007. This decline reiterates the need for the new objectives sought by the Director-General.
50. In my submission, the absence of objectives in Plan Change 1 that deal with upstream effects on the health of estuaries does not give effect to Objective (a) of the Vision and Strategy which requires restoration and protection of the health and wellbeing of the Waikato River, nor does it give effect to Objective (h) which recognises that the Waikato River is degraded and should not absorb further degradation as a result of human activities.
51. In terms of the amendments sought in relation to Objectives 1 to 6, Ms Kissick’s evidence, at paragraphs 232 to 266, discusses in some detail the rational for these proposed amendments. As such, I do not intend to cover this rational in my submissions.

³⁵ Refer para 225 of Ms Kissick EinC

³⁶ The Waikato Region State of the Environment Report information available on WRC website in 2017 (refer para 19 Ms Kettle’s EinC)

Other Matters

Coastal Marine Area

52. Counsel refers to paragraphs 82 to 87 of Mr Milne’s legal submission. These paragraphs discuss the Director-General’s Submission point regarding the need for Plan Change 1 to give effect to the NZCPS. Mr Milne is correct in his summary of this Submission point that Plan Change 1: *‘needs to be assessed against the NZCPS because all discharges to the Waikato and Waipā rivers eventually ‘discharge’ to the coast at Port Waikato’*.³⁷
53. Mr Milne states the extent to which the NZCPS is relevant will depend on the nexus between the effects of the land uses and their effects on the coastal environment. As mentioned above, Ms Kettles evidence states that seagrass is a good indicator species for impacts from upstream activities on the health of estuaries. Ms Kettle’s evidence confirms there has been a decline in seagrass species between 2002 to 2007 from 1.8ha to 0.8ha.
54. Counsel notes that the Council will refine/clarify the Plan attached to Mr Milne’s legal submissions showing the Coastal Marine Area Waikato River Mouth boundary. It is not clear where, on this Plan, the boundary is between the coastal marine area (red line) and the area captured by Plan Change 1 (purple line). While this does need to be clarified, I submit this is not of any great consequence in terms of the Director-General’s Submission point, that the effects of upstream land uses on the coastal environment are of concern and need to be addressed through Plan Change 1. This concern takes into account the holistic philosophy behind Te Mana o te Wai and the “Mountains to Sea’ approach. In turn, this recognises Objective 3(e) of the Vision and Strategy to pursue the integrated, holistic, and co-ordinated approach to management of natural resources of the Waikato River.

³⁷ Refer para 85 of Mr Milne’s legal submissions

55. The concern expressed in the Submission point remains regardless of where the boundary is drawn. However, the boundary is relevant in terms of some of the Outstanding Water Bodies sought in the Director-General's Submission which I discuss next.

Outstanding Freshwater Bodies

56. The NPSFM Interpretation section states 'Outstanding Water Bodies' are those water bodies identified in a regional policy statement or regional plan as having outstanding values, including ecological, landscape, recreational and spiritual values. The NPSFM does not define 'Outstanding' nor is there a standardised method to determine whether a waterbody is 'Outstanding'. The submission seeks that the following Outstanding Water Bodies are included in Plan Change 1:
- a. Waikato River, river mouth and delta,
 - b. Whangamarino Wetland,
 - c. Waitomo Caves/River (Karst system)
 - d. Waikato Peat Lakes, and
 - e. Lake Rotokotuku.
57. Focusing specifically on the Waikato River, river mouth and delta, Ms McArthur confirms this water body is identified for cultural, historic and aesthetic values and for high diversity of freshwater and estuarine indigenous species.³⁸ Appendix 2 of Ms Kissick's evidence refers to this water body as having excellent shore and estuarine bird habitat and that Port Waikato has been assessed as an internationally significant site for shorebirds, has high wildlife habitat value and is nationally significant for whitebait and native fishery.
58. Objective A2 (a) of the NPSFM requires overall quality of freshwater within an FMU is maintained or improved while protecting the significant values of

³⁸ Refer para 64 of Ms McArthur's EinC

outstanding freshwater bodies. Policy 8.2 of the WRPS requires identified outstanding freshwater bodies are protected and, where appropriate, enhanced. Objective (i) of the Vision and Strategy requires the protection and enhancement of significant sites, fisheries, flora and fauna. The river mouth and delta is a significant site for shorebirds and holds high wildlife value and is nationally significant for whitebait and native fishery. In my submission, identifying not only the river mouth and delta, but all the Outstanding Freshwater Bodies sought in the Director-General's Submission, in Plan Change 1 gives effect to Objective (i) of the Vision and Strategy.

Short-term to medium targets for Lakes

59. Policy CA3 of the NPSFM requires freshwater objectives for compulsory values to be set at or above the national bottom lines (NBL) for FMUs, unless:
 - (a) the existing freshwater quality of the FMU is already below the NBL for an attribute or attributes, and
 - (b) the Council considers it appropriate to set the freshwater objectives below the NBL.

60. However, Policy CA3 can only apply where existing freshwater quality is caused by naturally occurring processes, or any existing significant infrastructure, operational as at 1 August 2014, and listed in Appendix 3 to the NPSFM contributes to existing freshwater quality. In this instance, the freshwater quality of the rivers is not caused by natural processes, and Appendix 3 does not list any significant infrastructure. As such, the ability for Council to set values at or below the NBL is not available.

61. The Director-General submitted³⁹ that Plan Change 1 lacked aspiration for lakes that are already in the D band (so below the NBL) for some attribute states, or only just exceeded the threshold for D band. These lakes have an 80-

³⁹ Refer pages 18-19 of the Submission

year target of ‘maintain’ at current levels. This target does not seek to achieve the lakes restoration potential.

62. Dr Phillips will confirm that submerged aquatic plants play a significant role in maintaining and stabilising lake water quality, particularly in Shallow Lakes. The Director-General submitted that Plan Change 1 provide greater protection to submerged aquatic plants in lakes where they currently exist. Most Waikato lakes are already de-vegetated and have shifted from a clear water-macrophyte dominated state to turbid-algal dominated state.
63. Work is urgently required to assess the effectiveness of different catchment management scenarios for lakes. Appendix I to the Submission provided amended attributes the Director-General sought be included for lakes and Appendix H outlines the lakes in the catchment of highest priority.
64. A closer and more recent analysis of the short-term targets⁴⁰ for lakes show that some are actually below the NBL and located in D band on the National Objectives Framework (NOF) and, therefore, would not comply with Policy CA3 of the NPSFM. This reflects the significantly degraded state of some of the Waikato lakes. The reality is that improving some of these lakes to the extent that they shift out of the D band will take considerable time.
65. Dr Phillips will discuss this in more detail but, put simply, some lakes are so degraded that even with significant improvement, in some cases 50% improvement on their current state, they would still be in the D band in the short-term target timeframe. This then raises a question as to whether, in light of NPSFM policy CA3, it is appropriate to include targets in PC1 which are set in the D band (or below the NBL).

⁴⁰ Identified as amended Lake attributes in Appendix I to the Submission

66. Ultimately, PC1 must give effect to the Vision and Strategy. The Vision and Strategy states “that to achieve the vision, the following strategies will be followed;
- (d) develop targets for improving the health and wellbeing of the Waikato River by utilising mātauranga Maaori and the latest available scientific methods
- (e) develop and implement a programme of action to achieve the targets for improving the health and wellbeing of the Waikato River.
67. As discussed earlier in these submissions, s 12 of the River Act provides that the Vision and Strategy prevails over any inconsistent provision of the NPSFM. Accordingly, it is submitted that Plan Change 1 is able to include short-term targets that do not comply with Policy CA3, provided such targets are for the purposes of giving effect to the Vision and Strategy and improving the health and wellbeing of the Waikato River (which as noted above in paragraph 34 includes lakes and wetlands within the statutorily defined area described in the River Act.)
68. In light of this the Director-General submits that, where improvement can be made in the short-term, short-term targets should be included in Plan Change 1. In some cases, due to the highly degraded state of some lakes, these improvements will not lift the waterbody from below the NPSFM bottom line. However, such improvements are nonetheless important as the start of the long-term process of improving the health and wellbeing of the Waikato River.
69. For the long-term targets, many of the levels are in the C band. The Director-General submits that, where improvements can be made, then the associated targets should be included in Plan Change 1.
70. As mentioned, Dr Phillip’s evidence will explain and discuss this issue in detail when she presents her evidence.

Conclusion

71. The amendments to Plan Change 1 sought in the Director-General's Submission will give effect to the NPSFM and NZCPS where this is not inconsistent with the Vision and Strategy and will enable the Vision and Strategy to be realised sooner than what Plan Change 1 currently provides for.



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