

**BEFORE AN INDEPENDENT HEARING PANEL
OF THE WAIKATO REGIONAL COUNCIL**

IN THE MATTER OF

the Resource
Management Act
1991 (**RMA**)

AND

IN THE MATTER OF

of the Proposed
Waikato Regional
Plan Change 1:
Waikato and Waipā
River Catchments
and Variation 1 to
Plan Change 1

CLOSING STATEMENT OF WAIKATO REGIONAL COUNCIL AS SUBMITTER

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INTRODUCTION

1. Waikato Regional Council (**Council**) thanks the Independent Hearing Panel (**Panel**) for the opportunity to provide this closing statement in respect of its submissions and evidence to Proposed Plan Change 1 to the Waikato Regional Plan and Variation 1 to Proposed Plan Change 1 (collectively referred to as **PC1**).

IMPLEMENTATION ISSUES

2. Council is committed to implementing PC1 in whatever form it ultimately takes as efficiently and effectively as it can. As the regulatory authority tasked with this function, Council is primarily concerned with ensuring that the planning framework, including rules and associated requirements are: clear, robust, and able to be effectively implemented and ultimately enforced. This is essential to achieve the outcomes sought through PC1 and give effect to Te Ture Whaimana o Te Awa o Waikato, the Vision and Strategy for the Waikato River (**Vision and Strategy**). This is essential given the approximately 13,800 farming activity land uses that are greater than 4.1 hectares within the Waikato and Waipā River Catchments.
3. In respect of implementation issues, Council presented evidence on a range of matters including:
 - a. The policy framework, particularly Policy 1 (Diffuse discharge management), Policy 2 (Farm environment Plans), and Policy 3 (Reducing diffuse discharges from commercial vegetable production systems).
 - b. Rules for both farming and commercial vegetable production and the implications of various consenting regimes in terms of the numbers of consents and the potential complexities and costs associated with both controlled and restricted discretionary activity consents.
 - c. An alternative phasing of consent applications to provide a more even spread for the development of farm environment plans and the lodging and processing of resource consent applications to enable farmer engagement and to 'smooth' resourcing for both industry and Council alike.
 - d. Monitoring and enforcing of nitrogen inputs and the importance of clear requirements for good farming practice including minimum standards.
 - e. The importance of managing the intensification of farming alongside good farming practice and the potential use of minimum standards for farming –

being essentially mandatory minimum practices for certain high-risk farming activities to balance flexibility and certainty of outcome.

4. Council appreciates that many of these issues are at the forefront of the Panel's deliberations. Council's implementation team continues to work with the Reporting Officers to refine the notified provisions to address implementation matters. Accordingly, the S42A team's report back document will incorporate Council's input on implementation matters.

FLOOD PROTECTION AND LAND DRAINAGE SCHEMES

5. Council is the operator of some 75 flood protection and land drainage schemes (**Schemes**) and associated infrastructure within the Waikato and Waipā River catchments. The Schemes were constructed and are currently managed under a range of legislation, including the Land Drainage Act 1908, Soil Conservation and Rivers Control Act 1941, Public Works Act 1958, Rating Powers Act 1988, Resource Management Act 1991 and the Local Government Act 2002. These Acts empower, regulate and require WRC to own and manage infrastructure in a sustainable manner for the regional communities' social, economic, cultural and environmental wellbeing.
6. The Schemes provide the essential functions of managing and reducing flood risk and enabling and protecting economic productivity for the people and communities within the significant areas they serve, including the farming activities that will themselves be subject to the PC1 provisions. As the Panel will be aware, the management of the significant risks from natural hazards is a matter of national importance that must be recognised and provided for under section 6 of the RMA.
7. Discharges from the Schemes are considered a point source discharge under the Waikato Regional Plan (**WRP**) and are therefore subject to the requirements of PC1 – notably Policies 12 and 13 and amendments to Rule 3.5.10.2 of the WRP – where a resource consent is required.
8. Council contends that discharges from the Schemes differ from most other point source discharges. As is described in the evidence of Mr Basheer¹, the drains, floodgates and pump stations that comprise the Schemes are direct conveyance structures, which receive runoff from upstream and transport it across a control structure at the same time or within a short time period depending on its capacity and changes in water levels. In some circumstances Schemes may be pumped, rather than

¹ Para 29, evidence of Ghassan Basheer on Behalf of WRC as Submitter, Technical Block 2, 3 May 2019

gravity fed, due to their function of draining land for agricultural use. In this role, the Schemes control groundwater and operate at levels below the land surface.

9. In the context of PC1, which focuses on four contaminants (nitrogen, phosphorus, sediment and microbial pathogens), Scheme discharges do not generally add to the contaminants that are already in the flow – although it is acknowledged that some sediment may be generated from channel erosion or resuspension, particularly during flood conditions. However, discharges from the Schemes do not involve the introduction of additional contaminants to the wider water system.
10. This does not mean that the operation of flood protection and land drainage schemes does not give rise to adverse effects. Hydrological modification of the nature and extent of the Schemes described in the evidence of Mr Basheer cannot realistically occur without some change to natural hydrological regimes. These effects are currently managed through the provisions in the WRP, including in accordance with resource consents obtained under that plan. Further, the two functions of promptly passing flood flows and managing groundwater levels make it inherently difficult to remove entrained contaminants through traditional methods such as detention and filtration. For this reason, it is preferable and more effective to control the discharge quality at source.
11. Council is not seeking that the discharges from flood protection and drainage schemes be entirely excluded from the provisions of PC1. All parties managing discharges in the Waikato and Waipā River catchments should reduce contaminants where it is practicable to do so. Rather, the provisions should recognise that the contaminants that are transported in flood protection and land drainage schemes are already subject to land use and discharge requirements under PC1 and are more effectively and appropriately controlled at source. Requiring additional management and mitigation at the point where the water passes through a control structure is ‘double jeopardy’ – essentially imposing two layers of requirements on farmers whose land lies within a consented drainage scheme. As indicated by Mr Basheer², the drainage service is entirely funded by targeted land drainage rates and is in addition to other Council charges and the obligations on farmers to manage land use and discharges under PC1.
12. Further, a requirement to offset residual effects is unreasonable where the contaminants are generated and initially discharged to water by other parties in

² Para 23 of Mr Basheer's Block 2 evidence

accordance with authorisations (permitted activities and resource consents) of PC1 and the WRP.

13. Changes to the provisions to address Council's concerns are proposed in the evidence of Mr Mayhew³. However, by way of summary, Council:
- a. accepts that discharges from flood protection and land drainage schemes should be subject to the best practicable option to prevent or minimise the adverse effects of the activity (Policy 11), **provided that** there is recognition of the essential role and function of the Schemes (i.e. positive effects) and the inherently limited ability to further control and reduce contaminants that entrained in the water as a result of other discharge activities (changes to Policy 12);
 - b. does not agree that Schemes should be required to mitigate residual contaminant effects (Policy 11) on the basis that the contaminants conveyed in the Scheme's channels and watercourses are predominantly sourced from rural land use and discharge activities that are already subject to the requirements of PC1 such that there will be an inequity between farmers inside and outside the Schemes; and
 - c. considers that WRP Rule 3.5.10.2 should give the same regard to the water quality attribute targets (in Table 3.11-1) as it currently does to the existing water quality standards/Water Management Classes in the WRP.
14. In questioning, Commissioner Robinson asked Mr Mayhew whether there was an alternative to a 'carve out' in respect of mitigation for Scheme discharges. Council has given further thought to this question. In Council's opinion, the primary issue is the extent to which the activity is responsible for the contaminants in the discharge, noting that the initial discharge of contaminants will already be 'authorised' under PC1 and the WRP. Accordingly, one option is to introduce the concept of a 'secondary' discharge, noting that Policy 11 already has reference to a 'primary' discharge. In this instance, a secondary discharge would be where contaminants already entrained in the water are subject to a secondary 'discharge', for example passing flows through a control structure, and would not just apply to flood protection and land drainage schemes.
15. Turning briefly to the rebuttal evidence of Dr Hugh Robertson for the Director-General of Conservation, Dr Robertson advises that in his opinion:

³ Para 45, Evidence of Ian Mayhew on Behalf of WRC as Submitter: Planning - Block 2, 3 May 2019

- a. Flood protection and land drainage schemes are primarily diversions⁴;
 - b. That: *a flood protection scheme such as the Lower Waikato and Waipā Flood Control Scheme (LWWFCS) can add a significant new load of contaminants into a water body that previously had limited or no hydrological connection⁵; and*
 - c. If Council's changes are adopted, a major driver of water quality degradation (the diversion of additional contaminant load into receiving waterbodies from flood and drainage schemes) will not be addressed⁶.
16. Mr Mayhew addressed these points in his verbal evidence. The LWWFCS was initiated more than 50 years ago to address significant flooding issues and also the hydrological changes in the Waikato River associated with hydroelectricity generation. A new flood protection and land drainage scheme would be a discretionary activity under the WRP and would be subject to the requirements of that plan including a full assessment of effects commensurate with the scale of the diversion and discharge and associated effects. In Council's view, the effects of a new diversion and discharge can be fully and comprehensively assessed under the current provisions of the WRP and the relevant provisions of PC1 as proposed below.
17. In summary, Council's proposed changes are:⁷

Policy 11: Application of Best Practicable Option and mitigation or offset of effects to point source discharges/Te Kaupapa Here 11: Te whakahāngai i te Kōwhiringa ka Tino Taea me ngā mahi whakangāwari pānga; te karo rānei i ngā pānga ki ngā rukenga i ngā pū tuwha

Require any person undertaking a point source discharge of nitrogen, phosphorus, sediment or microbial pathogens to water or onto or into land in the Waikato and Waipa River catchments to, as a minimum, adopt the Best Practicable Option to avoid or mitigate the adverse effects of the discharge, ~~at the time a resource consent application is decided.~~*

Where it is not practicable to avoid or mitigate all any adverse effects, cannot be reasonably avoided, they should be mitigated, and where they cannot be reasonably mitigated, it is encouraged that an offset measure may be proposed in an alternative location or locations to the point source discharge, for the purpose of ensuring positive effects on the environment to lessen any residual adverse effects of the discharge(s) that will or may result from allowing the activity provided that the:

- a. *Primary discharge does not result in any significant or toxic adverse effect at the point source discharge location; and*

⁴ Para 11, Rebuttal Evidence of Dr Hugh Robertson On Behalf of The Director-General of Conservation: Block 2, 10 May 2019

⁵ Rebuttal evidence of Dr Hugh Robertson, para 25.

⁶ Rebuttal evidence of Dr Hugh Robertson, para 29

⁷ Black tracks – s42A changes to notified version; red tracks – Mr Mayhew's changes in evidence from the S42A version; additional change to respond to Commissioner Robinson's question is highlighted in yellow

- b. Offset measure is for the same contaminant; and
- c. Offset measure occurs preferably within the same sub-catchment in which the primary discharge occurs and if this is not practicable, then within the same Freshwater Management Unit or a Freshwater Management Unit⁸ located upstream, and
- d. Offset measure remains in place for the duration of the consent and is secured by consent condition or another legally binding mechanism.

No mitigation is required for a secondary discharge⁸ of contaminants, for example where the discharge is associated with a Flood Protection and Land Drainage Scheme, developed in accordance with the relevant provisions of the Land Drainage Act, the Soil Conservation and Rivers Control Act and other relevant legislation.

~~Policy 12: Additional considerations for Considering point source discharges in relation to water quality targets/Te Kaupapa Here 12: He take anō hei whakaaro ake mō ngā rukenga i ngā pū tuwha e pā ana ki ngā whāinga ā-kounga wai~~

~~When determining the best practicable option and deciding a resource consent application, consider the contribution made by a point source discharge to the nitrogen, phosphorus, sediment and microbial pathogen catchment loads and the impact of that contribution on the likely achievement of the short term water quality attribute states^Δ targets^Δ in Table 3.11-1 ~~Objective 3~~ or the progression towards the 80-year water quality attribute states^Δ targets^Δ in Objective 4 ~~Table 3.11-1~~, taking into account:~~

- ~~a1. Whether the discharge is associated with a Flood Protection and Land Drainage Scheme, developed in accordance with the relevant provisions of the Land Drainage Act, the Soil Conservation and Rivers Control Act and other relevant legislation; and~~
- ~~a2. Whether the activity solely transports upstream flow across or through a dam or control structure without adding to nitrogen, phosphorus, sediment or microbial pathogens loads in the flow and the practical ability to reduce contaminants in the flow; and~~
- a. The relative proportion of nitrogen, phosphorus, sediment or microbial pathogens that the particular point source discharge contributes to the catchment load; and
- b. Past ~~technology~~ upgrades undertaken to ~~model, monitor and~~ reduce the discharge of nitrogen, phosphorus, sediment or microbial pathogens within the previous consent term; and
- c. ~~The ability~~ Whether it is appropriate to stage future mitigation actions to allow investment costs to be spread over time and to meet the water quality attribute states^Δ targets^Δ specified above; and
- ~~d. The diminishing return on investment in treatment plant upgrades in respect of any resultant reduction in nitrogen, phosphorus, sediment or microbial pathogens when treatment plant processes are already achieving a high level of contaminant reduction through the application of the Best Practicable Option*.~~

Rule 3.5.10.2

Waikato Regional Council reserves control over the following matters:

⁸ A secondary discharge is where contaminants entrained in a water body are passed from upstream to downstream across or through a structure and does not involve the introduction of additional contaminants

- i. Measures to prevent erosion or scour at the point of the discharge
- ii. Measures to prevent flooding effects on properties downstream of the discharge point, which have not been addressed by the scheme design approval process.
- iii. Measures to prevent adverse effects on any wetland that is an area of significant indigenous vegetation or habitat of significant indigenous fauna.
- iv. Measures to ensure the discharge does not adversely affect the receiving water body in a manner which is inconsistent with the relevant Water Management Classes identified in Section 3.2.4 or in the case of the Waikato and Waipa River catchments, the water quality attribute targets in Table 3.11-1.
- v. ~~In the case of the Waikato and Waipa River catchments, measures that recognise and provide for the objectives in Chapter 3.11.~~

THE WHANGAMARINO WETLAND (POLICY 15) AND THE LWWFCS

18. In its submission, Council supported the reintroduction (by Variation 1) of Objective 6 and Policy 15 in respect of the Whangamarino Wetland (**the Wetland**), reflecting that it is a Ramsar site of international importance. However, Council is concerned that the consequences of amendments proposed by Deborah Kissick for the Director-General of Conservation and Helen Marr for Fish and Game are not clear and are peripheral to the four contaminant focus of PC1.
19. Mr Mayhew⁹ addressed the matters raised in the evidence of Ms Kissick and Ms Marr. However, two proposed amendments to Policy 15 are of primary concern:
- a. The proposed change to 'avoid' further loss of the bog system (Ms Kissick and Ms Marr); and
 - b. The introduction of a specific requirement: *Managing the hydrological regime including the impacts of the Lower Waikato Waipā Flood Control Scheme (Ms Marr).*
20. In respect of the first, following the decision of the Supreme Court in *King Salmon*¹⁰ the use of the term 'avoid' in planning instruments sets a very strong and directive policy framework. In the case of the Whangamarino wetland bog system, which is understood to be the most sensitive component of the wetland system, this directive may be entirely appropriate. However, if the Panel is of a mind to adopt this amendment, then PC1 should be clear as to how this requirement to 'avoid further loss' is to be interpreted in practice.

⁹ PC1 Block 3 - Rebuttal evidence of Ian Mayhew for Waikato Regional Council as submitter 19 July 2019

¹⁰ Environmental Defence Society v New Zealand King Salmon [2014] NZSC 38, (2014) 17 ELRNZ 442.

21. A key concern for Council is its ability to operate the LWWFCS to continue to provide essential flood protection services to urban communities within Te Kuiti, Otorohanga and rural communities in the lower Waikato and Waipā River catchments. However, this policy would also apply for the numerous diffuse and point source discharges that collectively contribute contaminants to the Wetland and which may affect the bog system, within the 79,700 hectare catchment of the Lake Waikere and Whangamarino wetland¹¹.
22. In respect of the proposed explicit reference to managing the LWWFCS proposed by Ms Marr, Council reiterates that this Scheme is an extensive and complex system that was commenced in 1961 and completed in 1982. It provides protection for some 17,700 hectares of land and benefits to an additional 16,000 hectares and was initiated to manage severe flooding and augmented to address effects associated with the Tongariro Power Development and damming of the Waikato River for hydroelectricity generation. Council's view is that the hydrology of the Waikato and Waipā Rivers needs to be considered as a whole – through an entire system lens. The operation and management of the Scheme is inherently linked to the hydrology of the rivers, including Lake Taupo operating levels. Focusing in on just the Lower Waikato and Flood Control Scheme is not appropriate.
23. Council also notes that it currently operates the LWWFCS in accordance with resource consents for the diversion and discharge of water, and other activities, associated with the Scheme. These were granted under the WRP and have been the subject of a review over the past five years, resulting in a range of measures to reduce sediment conveyance to the Wetland¹². Council considers that the provisions of the WRP enable a thorough assessment of effects from major flood protection and land drainage schemes and further amendments are not required.
24. In summary, Council supports the notified wording of Policy 15 and considers that it is consistent with the objectives of PC1 and the Vision and Strategy. It does not support the amendments proposed by the Director-General of Conservation and Fish and Game. It is concerned that these proposed amendments move away from the contaminant focus of PC1 and that the consequences of the amendments are not well understood.

¹¹ Lake Waikere and Whangamarino Wetland Catchment Management Plan. Part one: Catchment Background Final for discussion, 26 July 2018.

¹² Paras 36 and 37 of Mr Basheer's Block 2 evidence