

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 3 Hearings:
Parts C7 - C9

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

Planning

Dated: 19 July 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 I have assessed the permitted activity and rule framework and Schedule 1 in response to alternatives put forward by various parties in evidence, in particular Mr Willis, on behalf of Fonterra and Mr Eccles, on behalf of Federated Farmers. I have worked with Ms Addenbrooke to prepare amended provisions and track changes to Schedule 1 and 1A.
- 1.3 I have assessed and confirmed my understanding of the consent triggers under the permitted activity framework that relies on certified Farm Environment Plans, Certified Farm Environment Planners and Certified Sector Schemes (**CSS**). I consider that these three Certification processes provide Council with a degree of confidence that an individual property or enterprise operating as a permitted activity within a CSS is incentivised to ensure the requirements of the Farm Environment Plan (**FEP**) is met. I also consider that the CSS and CFEP are equally incentivised to ensure their obligations are met.
- 1.4 I have recommended a number of track changes to the plan provisions to address issues related to auditing, monitoring and review of Schedule 1 and 1A.
- 1.5 I would be available for witness caucusing should that be requested on the provisions of Schedule 1 or the alternative 1A, and also on application of the Dragten grading system to the permitted activity framework.

2. SCOPE OF REBUTTAL EVIDENCE

- 2.1 This statement of rebuttal evidence addresses certain matters raised in the primary evidence of:

Fonterra – Mr Gerard Willis;

Federated Farmers – Mr Grant Eccles;

Dairy NZ – Ms Justine Young;

Fish and Game – Ms Helen Marr.

2.2 My rebuttal is focused specifically on the analysis and comments set out in these statements of evidence in respect of:

Permitted Activity Status and Farm Environment Plans;

Methods;

Proposed Grading System (Dragten Report);

Allocation; and

Sub-catchments.

2.3 In preparing my statement of evidence I have relied on the rebuttal evidence of:

Mr Grant Jackson; and

Ms Jude Addenbrooke.

3. PERMITTED ACTIVITY STATUS AND FARM ENVIRONMENT PLANS

3.1 The issues of permitted activity status for farming within a CSS and the contents of Schedule 1 are closely linked and my rebuttal evidence addresses them together for that reason.

3.2 In my primary evidence I noted that further work is required to determine how Schedule 1 can be best adapted to include specific criteria/standards and I anticipated that iterative versions of the Schedule would be presented during the evidence period which Miraka would respond to. As expected a number of experts filed evidence in relation to FEPs, including those set out in paragraph 2.1. As stated in the evidence of Mr Grant Jackson, Miraka has carefully considered the evidence presented and its rebuttal evidence outlines its position on this critical issue.

3.3 In summary, Miraka's preferred approach is that:

The CSS regime be retained;

All farms within a CIS that comply with the standards in the permitted activity rule 3.11.5.3, including the preparation of a Farm Environment Plan, are permitted activities (Attachment 1); and

A Farm Environment Plan that satisfies Rule 3.11.5.3(5) is to be prepared in accordance with the version of Schedule 1 '*Requirements for Farm Environment Plans*' contained with the section 42A report (the Dragten version), as modified by Ms Jude

Addenbrooke (Attachment 2). This includes a requirement that the FEP be certified by a Certified Farm Environment Planner.

Dragten Schedule 1

- 3.4 Ms Addenbrooke has reviewed the Dragten version of Schedule 1 and in light of her experience and expertise to provide Miraka's preferred version of Schedule 1.
- 3.5 As set out in Ms Addenbrooke's rebuttal evidence her amendments adopt some of the changes proposed by Mr Eccles on behalf of Federated Farmers. In addition there are further amendments to provide the level of flexibility that farmers need in order to manage and invest in their farms and the agility needed to respond to farm-specific circumstances and seasonal impacts.
- 3.6 The objectives and principles that form the basis of the Dragten approach, whilst very comprehensive, also enable a context-based assessment that can be targeted to the specific opportunities, constraints and management practices required for each property or enterprise. For this reason, there are clear advantages to a more principle-based approach. It is more consistent with Miraka's focus on practice change and allows the tailored and flexible approach that many farmers have been seeking. Other benefits include:

Providing greater flexibility for the farmer/land manager and Certified Farm Environment Planner to respond to changing industry standards when identifying good farming practice for each farm (including the relevant principles and then the relevant actions to meet those principles);

Enabling agreement to be reached on practicable actions and outcomes that are realistic in the circumstances, rather than requiring investment in resource consent process in circumstances where the efforts are more sensibly focused on addressing actions required to achieve good farming practice outcomes.

Standards-based Schedule 1A and Certified Sector Schemes

- 3.7 I acknowledge that the Commissioners have expressed some concerns about whether an objectives and principles approach is appropriate and involves an unacceptable level of discretion that does not fit comfortably with a permitted activity rule. If that concern remains, notwithstanding the drafting efforts of various experts, then Miraka's preference is to adopt a more prescriptive, standards-based approach to Schedule 1A, similar to that outlined in the evidence of Mr Willis for Fonterra, under the permitted activity rule framework as part of a Certified Sector Scheme.

- 3.8 The opportunity to obtain permitted activity status for medium intensity farming operating under a Certified Sector Scheme (CSS) is considered the primary incentive for joining a CSS.
- 3.9 As with the Dragten Schedule 1, Ms Addenbrooke has reviewed Mr Willis' Schedule 1A in consultation with Mr Warren Landles (Miraka's Farm Environment Planner) and provided various amendments and additional standards.
- 3.10 Changes are recommended specifically to make the schedule more workable based on good farming practice and Miraka's experience with Te Ara Miraka. In particular, Ms Addenbrooke has removed reference to 75th percentile in view of Miraka's position as described in Mr Jackson's evidence that the 75th percentile is inequitable and should be removed as it is effectively a pre-emptive allocation regime.
- 3.11 The application of this version of Schedule 1A is confined to only those farms that operate as part of a CSS. Likewise, this membership together with certification and auditing of the Sector Scheme is considered an incentive to ensure members of the scheme implement the requirements of their Farm Environment Plans.
- 3.12 It is important that the FEP identify the actions that need to be undertaken and standards that need to be implemented immediately, ie within 12 months of the date the FEP is certified, and those that could be implemented over a longer period of time, for example when capital becomes available. The CFEP who certifies the FEP is best placed to determine which action /standards are critical and which can be implemented over time. There is then a link to how those different actions are monitored and reviewed.
- 3.13 Identifying critical actions will ensure that the most risky activity are addressed immediately while giving some flexibility as to the timing of less important activities to realities of farming practice, as outlined by Mr Jackson in his rebuttal evidence.
- 3.14 I have reviewed Mr Willis's version of Schedule 1A together with Ms Addenbrooke's amendments and have inserted a new Part D. The purpose this new Part D is to ensure clarity of expectation around monitoring, review and auditing of the Farm Environment Plans. My key changes include:
- Removal of reference to resource consent processes as Miraka's proposed Schedule 1A applies to permitted activity rule 3.11.5.3;
- Addition of requirement for the review to be undertaken no later than 12 months following approval of the FEP;

Specification of the commitments to be reviewed through the evaluation including:

- (i) Performance of the property or enterprise against the actions and practices recorded in the FEP that is being reviewed including any critical actions required to be undertaken within 12 months of certification have been undertaken; and
- (ii) Whether the commitment to continue good farming practice has been fulfilled; and
- (iii) Whether there has been an acceptable rate of progress towards the practices and actions in the FEP that can be implemented over time.

3.15 I consider that Council can therefore have a degree of confidence that the CSS and permitted activity status offers incentives to ensure the requirements of Schedule 1A are rigorously monitored and maintained if the farm environment plans, CSS's and permitted activity status of the associated properties or enterprises are collectively to be retained.

3.16 Overall the benefits of this approach are:

It replaces the officers' recommended starting point that the majority of farming activities in the region will require resource consent with an approach that provides a pathway for farms to be considered permitted activities provided they operate under a CSS with a well prepared FEP.

The CSS will pro-actively monitor and ensure its scheme members are maintaining the necessary standards so as to ensure the CSS Certification status is not lost.

The CEFP will pro-actively ensure his/her plans are robust so as not to lose his/her certification.

The Farmers will be incentivised to pro-actively meet the commitments of their FEP so as not to lose their permitted activity status. Furthermore, should the CSS and/or the CFEP lose their certification the Farmer will automatically fail to hold a Certified FEP and will require resource consent.

3.17 I consider that the peer pressure of this approach will not only help achieve the objectives and policies of the plan but also support the Council in the education and delivery of better farming practice in the region.

Permitted Activity Triggers

3.18 Identifying the resource consent triggers is fundamental to understanding how the permitted activity rule framework and Schedule 1 or 1A process works. My assessment of the plan provisions (as included in my Attachment 1) is that with the amendments proposed by Miraka, resource consent will be required in the following circumstances:

When the Permitted activity rule cannot be complied with both for low intensity farming and farming under a CSS, including for example:

- (i) No NRP
- (ii) A Farm Environment Plan is not or cannot be obtained (for example if it cannot be certified, or the farmer is unable or unwilling to undertake the actions regarded by the CFEP as critical or important for the farm).
- (iii) The monitoring, review and audit requirements of Part D of Schedule 1A demonstrate that the standards of the FEP cannot be met and/or the actions required in the FEP have not been taken, or there has been insufficient progress towards implementation of some standards.

The Sector Scheme loses its certification status and all farms require new FEPs.

The Certified Farm Environment Planner loses his/her certification and all farms require new FEPs.

The Council can at any time consider that a review of the activity is required and determine that either consent and/or enforcement action is required.

3.19 It is important to get these triggers right and for them to be clear to the Farmer, CEFP and CSS. They are both an incentive to achieve good farming practice and are key tools for benchmarking and monitoring practice change.

Controlled activity status

3.20 In the event that Panel determines that permitted activity status for medium intensity farming under a CIS cannot meet the necessary legal tests or is inappropriate, then such farming should be a controlled activity, for the reasons outlined in my evidence for Block 2.

3.21 In those circumstances the amendments proposed to Schedule 1 as attached should be adopted for all controlled, restricted and discretionary activity rules related to farming.

Permitted Activity Grading

- 3.22 Mr Eccles comments on the grading system set out in the Dragten report and applies this grading system to the permitted activity rule framework.
- 3.23 There is substantive detail in the Dragten report on use of the grading system and how for example a drop in grade may result in a visit from a compliance officer. The same approach can be used within a permitted activity framework to determine when a permitted activity should become a controlled activity.
- 3.24 Whilst addressed in the Dragten report the application of this grading system has not been put forward by the Council officers as part of the proposed controlled activity rule framework. Understandably they have not put forward the grading system as part of the permitted activity rule since they consider medium intensity farming should be a controlled activity. If the grading system is used to determine permitted activity status then it should be expressly provided for in the rule framework.
- 3.25 Given the absence of this approach in the Council's track changes attached to the s42A report, should the commissioners consider that this grading system is an appropriate pathway then one option would be for experts to caucus on the options for adopting the grading system into the rule framework and/or Schedule 1. I have proposed some amendments to the provisions as a working example.

4. METHODS

- 4.1 A number of submitters have opposed removal of the methods as recommended in the section 42A report. As set out in my primary evidence I consider that the methods provide a transparent link between the statutory objectives policies and rules of PC1 and the principles of the management framework the Council proposed to implement in support of PC1. The Miraka case has emphasised the importance of practice change to achieve the desired improvements in farming practice and the Methods provide an important tangible commitment to assist this.
- 4.2 In my track changes version of PC1 (Attachment 1) I have suggested additional amendments to the methods to ensure a transparent commitment to auditing of the Certified Farm Environment Plan. Under method 3.11.4.10 I have recommended stating that the Council is committed to undertaking a specified number of Independent annual random audits of CEF approved FEPs. I have also included specific reference to the maintenance of annual monitoring records and that those records are made publically available and updated annually.

4.3 Ms Justine Young on behalf of Dairy NZ at paragraphs 19-21 also addresses the benefit of 3.11.4.10 in supporting plan users in tracking implementation of PC1. There is considerable value in ensuring comprehensive and publicly available monitoring and auditing data on progress being achieved through PC1 and actions being undertaken by the regional farming community.

5. ALLOCATION

5.1 I have reviewed the evidence of Ms Marr on behalf of Fish and Game. It supports retention of policy 7 'Preparing for allocation in the future' on the basis that retaining the policy avoids the risk of communities not being fully informed in the future as to an intended move towards allocation.

5.2 Dr Phillip Mitchell on behalf of Oji Fibre Solutions supports removal of Policy 7 and suggests a rewording to focus on gathering information for future policy development. I support this approach and consider that it can be addressed through the method 3.11.4.7/8. I have suggested amendments to the method to support this approach based on information collection and monitoring.

5.3 I have therefore proposed deletion of method a. in 3.11.4.7 '*implementing processes that will support the setting of property or enterprise level diffuse discharge limits in the future*' and retention of b. *related to research*.

6. SUB CATCHMENTS

6.1 The majority of primary evidence for other submitters appears to support sub catchment management and retention of Policy 9.

6.2 In my Block 1 statement of evidence I set out Miraka's support for the sub catchments and FMUs but proposed a reconfiguration of the FMU/Sub catchment boundaries. This was based on three main criteria of:

Hydrological connectivity:

Biophysical homogeneity; and

Socio cultural identification.

6.3 The principle of relying on FMUs/sub catchments further supports the need to retain the methods section of the plan. Method 3.11.4.5 'sub catchment scale planning' specifically sets out how the Waikato Regional Council will work with others to develop sub catchment scale plans.

6.4 I consider that this Method should be retained as it is integral to the overall management of the Catchments/FMUs and underpins the rule framework.

Kim Hardy

19 July 2019