

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

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of the Proposed Waikato Regional
Plan Change 1: Waikato and Waipā River
Catchments

**STATEMENT OF EVIDENCE OF CHRISTOPHER DAVID ANDREW MCLAY ON BEHALF
OF WAIKATO REGIONAL COUNCIL AS SUBMITTER**

Technical – Block 2

DATED 3 May 2019

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INTRODUCTION

1. My name is Chris McLay. I have held the position of Director of Resource Use at the Waikato Regional Council since January 2004, responsible for executive management of a range of functions, including council's regulatory responsibilities under the Local Government Act, Resource Management Act, Maritime Transport Act and Building Act.
2. I have a Ph.D. in soil science from Lincoln University.
3. I confirm that I am familiar with the Code of Conduct for Expert Witnesses as set out in the Environment Court Practice Note 2014. I have read and agree to comply with the Code. Except where I state that I am relying upon the specified evidence or advice of another person, my evidence is within my area of expertise. I have not omitted to consider material facts known to me that might alter or detract from the opinions expressed.

SCOPE OF EVIDENCE

4. The purpose of my evidence/this statement is to:
 - provide an overview of how the Waikato Regional Council is planning to implement the notified Healthy Rivers Wai Ora Plan Change 1 ("PPC1");
 - describe initiatives occurring at the national level which may impact on PPC1;
 - overview matters that staff will provide technical information on to the Hearing Committee relating to implementation.

PLAN IMPLEMENTATION PLANNING

5. Following the notification of the PPC1 on 22 October 2016, the Chief Executive asked staff to prepare a plan for its implementation. This has remained a Chief Executive KPI since. The project 'Healthy Rivers Implementation' remains a high priority project for council.
6. A project team was compiled and has a senior project manager and project governance (comprising senior managers from across council) overseeing its continued development. The project reports on progress to the Healthy Rivers Wai Ora co-governance committee.
7. The project has 5 workstreams, each with a dedicated workstream lead. The workstreams are: Information Technology Systems, Regulatory and Industry Schemes, Farm Plan and Sub-catchment planning, Communications and Engagement workstream and the Policy Effectiveness, Outcome monitoring and Science. I outline further what these workstreams comprise in the following paragraphs.

8. The Information Technology Systems workstream supports the HRWO Implementation project through development and delivery of technology systems, certifications, accounting and reporting frameworks. This workstream is critical to facilitating all interactions of farmers affected by PPC1 with Council and involves creation of a dedicated portal which will be a change to the way Council has interacted with farmers previously.
9. The Regulatory and Industry Schemes workstream is focussed on the regulatory aspects of PPC1, ensuring that the necessary systems, processes and resources are in place to support implementation. They are providing resources and developing systems and processes for: the registration of farms; the lodgement of nitrogen reference points (NRPs) or inputs; the certification of rural professionals; the certification of industry schemes; consent processing; compliance monitoring and auditing. To support these activities this workstream will also develop and deliver training for staff regarding consenting and compliance under PPC1 and prepare guidance for certified rural professionals who wish to become involved in the practical delivery of FEPs and auditing of such.
10. The Farm Plan and Sub-catchment planning workstream undertakes activities related to education and engagement with farmers and their representative industry groups. This team is also developing a farm environment plan (FEP) template that will support landowners and occupiers to undertake assessment of on-farm risk and develop effective good farming practices. They are also investigating and identifying the circumstances where sub-catchment plans would support PPC1.
11. The Communications and Engagement workstream supports the HRWO Implementation project (and in particular the work engaging with external stakeholders) through development and delivery of communications and promotional activities.
12. The Policy Effectiveness, Outcome Monitoring and Science workstream is responsible for the activities that relate to monitoring the progress towards achieving the PPC1 objectives. This includes monitoring and reporting on trends in water quality in order to track progress towards the 10 year and the 80 year attribute targets. They will provide the methodology for tracking and reporting progress against completion of mitigation actions. They also plan to provide indicators of social, cultural and economic wellbeing.
13. Relationships with stakeholders have been important to date. We have worked with various stakeholders to understand their thoughts and priorities as we plan for implementation, to enable them to understand the approach we propose taking and to get a sense of how they might be involved, including assistance to farmers and auditing, and

the design of information and regulatory systems. This has assisted staff in understanding where some of the obstacles and opportunities might be for more effective and efficient implementation.

14. Overall, subject to the final form of the rules framework, I believe we can develop the regulatory systems and processes needed to meet the plan requirements, in particular registration of farmers, receipt of nitrogen reference points and procedures for the receipt from farmers of consent applications. In making this statement, we assume there will be industry support to assist a significant number of farmers through the regulatory processes.
15. However, I point out that there will be significant implementation challenges even with those regulatory systems and processes in place. In particular, the volume of consent applications that we expect will be received within a short window of time will create significant resourcing challenges. The actual resources that council will need to ensure successful implementation is very difficult to predict and will be dependent on the final operative plan details. Mr Sinclair in his evidence provides more detail on that matter with respect to consent processing.
16. The timeframe for farmers to lodge NRPs may also be challenging. NRPs are currently required to be submitted in a 6 month window ending November 2020, only 18 months away. I understand 23 CFNAs are currently certified by Council, but I also understand there has been little uptake from landowners in getting NRPs assessed on their property whilst they await the outcome of the Hearing process. Not having an appropriate NRP submitted within the 2020 window will have a significant knock on effect on the consenting processes that follow. Mr Sinclair will elaborate on that issue in his evidence.

SCALE OF IMPLEMENTATION AND IMPACTS OF RECOMMENDED/POSSIBLE CHANGES TO THE RULES

17. This part of my evidence addresses the scale of implementation inherent in the provisions of PPC1 as notified and the potential impacts of recommended or possible changes identified in the s42A report. I acknowledge that there may be sound resource management reasons why certain changes to the rules framework are proposed to be made. This evidence is to ensure that, where the Panel has alternative approaches available to it, it is able to consider those options from a position that is informed insofar as they may impact on implementation.

18. It should also be noted when Council is considering implementation resourcing needs for the PPC1 that Council will need to also consider the many other operative rule requirements currently in the Waikato Regional Plan and Coastal Plan and national legislation requirements under the RMA including current and future NES requirements.
19. Our priority for the allocation of resources for the implementation of the PPC1 will be, at least initially, related to those tasks needed to complete the Plan requirements for registration (including NRP provision) and consent processing.
20. Staff will seek resources for compliance monitoring and enforcement from Council that enables Council to have an understanding of levels of compliance, is proportional to the amount of compliance that is observed and the behavioural change needed for those who choose not to comply with the PPC1. However, priority in that regard is likely to be given to implementing compliance strategies relating to those landowners who do not engage with registration and consenting requirements.
21. Planning for implementation to date has necessarily been based on the “as notified” version of PPC1. The key implementation assumptions based on that version include:
- The vast majority of farms (approx. 5,700) over 20 ha will require an FEP;
 - Approximately 2,000¹ of these farms will be permitted under a Certified Industry Scheme (permitted activity rule 3.11.5.3) and the Scheme will largely oversee the regulatory requirements of its members;
 - The majority of farms that require consent will require controlled activity consent under rule 3.11.5.4;
 - The number of farms in the first tranche is approximately 2,700, with approximately 1600 of these likely to require resource consent.
22. I understand that the s42A report recommends a number of changes to the proposed rules framework and, for some aspects, declines to make a firm recommendation but sets out some options for the Panel to consider. In my opinion, the final mix of rules and their associated activity status, has potentially significant impacts on implementation.
23. It should be noted that the actual processing of consents, in itself, is only one component of the regulatory systems and processes required for the proper implementation of the rules. Other components include administration, advisory services, communications, engagement, development of systems, processes and guidance, processes associated

¹ At the time of writing only Fonterra and Miraka have indicated an intent to provide a scheme. These schemes would account for approx. 2000 dairy farms.

with auditing, response to non-compliance, database management and reporting. Furthermore, that the broader regulatory process is just one aspect of the full suite of Council-wide work areas that must be engaged, developed and co-ordinated to enable full implementation of all of the various requirements of PPC1. Nonetheless, it is important that the rules framework, being an essential part of the deliverables of PPC1, be no more onerous than the circumstances require and no more costly to farmers and ratepayers than is necessary and justifiable. Mr Sinclair will give evidence on the implications of alternative rule options.

24. We have looked at various Scenarios and combinations of rules that might result from the advice that we understand the Panel will be receiving through the s42A report. For ease of comparison and for the purpose of this evidence, we have considered three Scenarios based on the following assumptions:

Scenario 1 (as notified): Rules framework as notified

Scenario 2: Rules framework as notified but assumes:

- No permitted activity pathway for farms under a CIS (i.e. all farms >20 ha require consent)

Scenario 3: Rules framework as notified but assumes:

- No permitted activity pathway for farms under a CIS (i.e. all farms >20 ha require consent)
- Tranche 1 is expanded to include 7 reprioritised sub catchments, and all dairy farms

25. Based on the above assumptions, the following is our assessment of the approximate number of consent applications that would need to be lodged in tranche 1;

- (a) Scenario 1 - 1,600 farms.
- (b) Scenario 2 - 2,700 farms.
- (c) Scenario 3 - 4,300 farms.

26. Mr Sinclair will provide comment on the implementability of the Scenarios and the impact of rule activity status. I note his recommendations that he considers necessary to provide our Implementation Team a reasonable chance of successful implementation. I agree with and endorse his recommendations.

CENTRAL GOVERNMENT INITIATIVES

27. Central government, the regional sector and rural industry sectors have been working towards getting all farms in New Zealand to have Farm Environment Plans for land and water quality that meet rural industry-agreed principles based on Good Farming Practices. I have personally been involved in the national project and a national plan for this was launched last year by the Ministers for the Environment and Primary Industries. There has been discussion in the Essential Freshwater programme of central government that this approach may be considered in future RMA legislation amendments. It would be useful for Healthy Rivers to align with a national industry-supported programme of work if it helps achieve the objectives of PPC1 and I support the s42A recommendations that FEPs be based around the Good Farming Practice principles.
28. Further, I have been leading a project to achieve a national certification of Farm Environment Plan advisors. This is to try and prevent up to 16 different regional council specifications of suitably qualified persons to give advice to farmers on how to prepare farm environment plans, to assist farmers to find a relevant advisor for their farm type and in their region, and to give regional council staff confidence that farm environment plans being developed are done so by competent advisors. This certification scheme is expected to be launched officially in July. It is important that the rules retain the provision of farm environment plan advisors being certified at a national scheme if one eventuates.

OTHER MATTERS

29. In my view, there are two considerable benefits that arise from the requirement for FEPs. First, having an appropriately qualified person to work with a farmer to develop an environmental plan for their property is an important first step in making changes that will decrease impacts of the farming activities on water quality which will go some way toward meeting water quality improvements anticipated by the Plan. Secondly, the information provided to Council will be essential for determining the current practices and likely impacts of new practices in improving water quality that may be necessary when considering future plan changes to meet the overall water quality objectives for the catchment.
30. The dates specified in PPC1 for when consents are required are critical for successful implementation and resourcing. Given that many land owners are likely to have protection under Section 20A of the RMA to continue their current land use until six months after specific PPC1 rules become operative, it would remove complexity and ambiguity by not

specifying dates. In that regard, I note that this is the recommendation in the s42A report and that is supported. Having said that, I acknowledge that the longer it takes for farmers to begin improvements toward GFP the shorter the period of time available to meet the water quality targets.

31. The wording of particular rules is important to consider with respect to compliance monitoring and any enforcement actions that may ensue. Whilst the amount of compliance monitoring and enforcement is discretionary, it is essential that the wording of any rules be such as to enable them to be readily enforceable in court against those who choose not to comply. Council in its submitter role will present further evidence on this aspect during the Block 3 hearing.
32. Council is currently considering how to encourage farmers to implement FEP recommended actions through consent requirements and auditing although I am uncertain how compliance strategies and enforceability will apply at this stage.

CONCLUSION

33. The uncertainty of how industry sectors will actually support their farmers, how the rule framework and timeframes will end up in a final operative plan, and the uncertain implication of any new central government legislation changes, remain significant challenges to the successful implementation of PPC1. It is important to remember that when considering implementation resourcing needs for PPC1, Council will need to consider the many other operative rule requirements currently in the Waikato Regional Plan and Coastal Plan and national legislation requirements under the RMA including current and future NES requirements. The priority for implementation of PPC1 will therefore be to authorise existing land owners through registration and lodgement of FEPs through the consenting process. Staff will seek resources for compliance monitoring and enforcement from Council that enables council to have an understanding of levels of compliance, is proportional to the amount of compliance that is observed and the behavioural change needed for those who choose not to comply with the PPC1.