

**BEFORE INDEPENDENT HEARING COMMISSIONERS
AT HAMILTON**

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of the hearing of submissions on Proposed Plan
Change 1 to the Waikato Regional Plan

**STATEMENT OF REBUTTAL EVIDENCE OF
GERARD MATTHEW WILLIS
FOR FONTERRA CO-OPERATIVE GROUP LTD (SUBMITTER 74057)**

BLOCK 2 HEARINGS

PLANNING

10 MAY 2019

RICHMOND
CHAMBERS

Counsel Instructed
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1. INTRODUCTION

1.1 My full name is Gerard Matthew Willis. A full description of my qualifications and experience is contained in my Block 2 statement of evidence dated 3 May 2019.

Code of conduct

1.2 I have read the Expert Witness Code of Conduct set out in the Environment Court's Practice Note 2014 and I agree to comply with it. I confirm that the issues addressed in this Statement of Evidence are within my area of expertise, except where I state I am relying on the specified evidence of another person. I have not omitted to consider material facts known to me that might alter or detract from my expressed opinion.

1.3 This statement of evidence in rebuttal contains my response to the planning evidence filed by:

- (a) Helen Marr for the Auckland/Waikato & Eastern Region Fish and Game Councils (**Fish & Game**) in relation to regionally significant industry and offsetting.
- (b) Deborah Kissick and Ms Kathryn McArthur for the Director-General of Conservation (**DoC**) in relation to offsetting and common catchment expiry.

2. EVIDENCE OF HELEN MARR

Policy 10 – Regionally significant industry

2.1 From paragraph 5.14 of her evidence, Ms Marr comments on the Waikato RPS's policy framework for regional significant Industry (**RSI**). In commenting on the applicable policy 4.4 she states that the policy recognises that the adverse effects of RSI must be avoided, remedied and mitigated and that the policy:

- (a) puts RSI alongside primary production activities;
- (b) provides for the benefits of primary production to be recognised in the same way; and
- (c) recognises that there are competing demands for resources.

2.2 She then concludes that the RPS *"does not give primacy over primary production or environmental goals."* As a result of this analysis she recommends deleting Policy 10 and making *"the benefits of the continued operation of ...RSI"* as a matter to "take into account" in Policy 12.

2.3 While I agree with Ms Marr in the sense that there is certainly an obligation on RSI to avoid, remedy and mitigate adverse effects and promote positive outcomes there is also an express obligation to provide for those activities. Hence, in my opinion, Ms Marr's planning interpretation that there is insufficient direction in the RPS to justify specific policy direction for RSI is incorrect. RPS Policy 4.4 very clearly states that:

*"...regional plans should provide for regionally significant industry
....by:*

...

c. maintaining and where appropriate enhancing access to natural and physical resources for regionally significant industry and primary production, while balancing the competing demand for these resources"

2.4 For that reason, I do not support the deletion of Policy 10 on the grounds that it is not supported by the RPS. As noted in my primary evidence, I do support clarification within Policy 10 that it is subject to the effects management Policies 11 and 12. In my opinion, such an amendment appropriately recognises the matters raised by Ms Marr.

Offsetting

2.5 At section 5.20 of her evidence, Ms Marr discusses the concept of offsetting. In doing so she draws exclusively on experience with biodiversity off-setting and claims at paragraph 5.26 that the principles set out in a Horizons One Plan policy, although specifically targeted at biodiversity, are relevant for freshwater. I disagree. While there are some similarities between managing biodiversity and managing freshwater there are also some fundamental differences.

2.6 In managing biodiversity, regulators are often faced with losing an intact (or at least naturally occurring) habitat or ecosystem. Attempting to offset that in a like for like fashion is challenging (some would say impossible).

This is because the artificial reconstruction or enhancement of a habitat elsewhere can never fully replicate the diversity and richness and associated inherent values of what is lost (forever) at the original site. Offsetting a contaminant load from a point source discharge, while still complex, does not have the complexity of biodiversity and hence in my opinion, the principles applicable to biodiversity offsetting will not all be applicable.

2.7 Ms Marr proposes a change to the definition of "offset" (page 10 of her evidence) which I do not support. She refers to offsetting being a *"measurable conservation action, demonstrated through robust and appropriate methodology that ... achieves conservation outcomes above and beyond that which would have been achieved if the offset had not taken place"*.

2.8 While I support the notion that offsets must be above and beyond that which would have occurred anyway (under the requirements of the plan), reference to 'conservation action' and 'conservation outcomes' is, in my opinion, inappropriate and potentially highly confusing. As I understand it, the offsets that will be appropriate under this policy will be reductions in specific contaminant discharges (loads to the river) upstream of the primary discharge. They will be required for the life of the consent. To introduce the notion that an offset might be some 'conservation action' seems to me to broaden the scope of the policy into unknown and potentially inappropriate territory.

2.9 This matter is also addressed by Dr Neale for Fonterra and I agree with his evidence on this matter.

3. EVIDENCE OF DEBORAH KISSICK AND KATHRYN MCARTHUR

Policy 11 - Offsetting

3.1 Ms Kissick recommends deleting the off-setting provisions of Policy 11. That planning recommendation is based "on the views of Ms McArthur" (para 214). Ms McArthur's evidence (paragraph 16 of her EIC) is that:

- (a) what is proposed is 'contaminant trading' not off-setting;
- (b) she is *"sceptical of the technical feasibility of the approach"*; and

(c) she is *"not convinced off-setting of point source discharges would achieve the objectives"*.

3.2 While I accept that may be Ms McArthur's professional opinion as a water quality scientist, I could find no planning analysis in either Ms Kissick's or Ms McArthur's evidence that demonstrates why off-setting would not achieve not PC1's objectives or which justifies deleting the offsetting provisions from the plan.

3.3 It is a straightforward proposition that, if reductions in contaminants beyond that achievable by the adoption of BPO are necessary but are not technically achievable (or are prohibitively expensive) at the point of discharge, then making those additional reductions at another site, where they are technically feasible and would not be prohibitively expensive, would be a sensible and economically rational policy approach to take. There is the question as to whether mitigation beyond BPO will necessarily always be required but I address that at paragraph 15.7 of my EIC.

3.4 Dr Neale has explained how freshwater off-setting is common in other jurisdictions. In policy terms, such an approach allows the least costly effects mitigation to be taken, or put another way, allows for the most reductions to be achieved from a set level of investment. There is no need for a complex "trading" system, the policy framework simply needs to allow an applicant to come forward with a proposal and, if that proposal is acceptable, have the mitigations secured through a consent condition or other legally binding instrument.

3.5 In my opinion, deleting the offsetting provisions limits the potential mitigation for a point source discharge to that possible using BPO at the discharge site. That can only limit the benefits to the Waikato River catchment from point source discharge management that is achievable under PC1.

Policy 13 – Common catchment expiry dates

3.6 At paragraph 13 of her evidence Ms Kissick expresses support for Policy 13 incorporating common catchment expiry dates.

3.7 The reasons provided by Ms Kissick are that common catchment expiry dates:

- (a) are fair and equitable (para 218).
 - (b) allow the Council to anticipate workloads and respond accordingly (para 219).
 - (c) are an effective way to manage cumulative effects (para 221).
- 3.8 In her tracked change version of PC1 Ms Kissick suggests common catchment expiry dates on a 10 yearly cycle. As I understand Ms Kissick's proposal, if an application is considered within 3 years of an expiry date it may receive a consent term that is the following common catchment expiry date (meaning that a 13-year term is the maximum possible).
- 3.9 I disagree with Ms Kissick's analysis of common catchment expiry and with her planning proposal in this regard.
- 3.10 It would only be unfair or inequitable if, in the absence of the common catchment expiry, different policy tests were applied to different applications. That is not the case here. PC1 will establish the policy to be applied consistently regardless of the timing of applications.
- 3.11 Ms Kissick provides no analysis of the number of consents in the catchment that would expire at the same time or of the number of staff the Council would need to retain every 10 years to process those applications in a timely manner. In my opinion the task would become unmanageable and there is no guarantee that the Council could simply "up resource" for a few months every ten years. In my opinion, sufficient people with the right expertise and experience would simply not be available.
- 3.12 It is not clear to me what advantage common catchment expiry provides to the management of cumulative effects. In my opinion, effective management of cumulative effects is dependent on there being clear and certain property-specific limits (in terms of diffuse discharges) and a clear and certain policy framework which limits the load from point source discharges (such as I have proposed in my EIC). Having all consents expire at the same time provides no guarantee of better management of cumulative effects. Under a common catchment expiry approach each application must still be determined in the order in which a complete application has been received (first in, first served).

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3.13 I note also that a 10, or even 13, year consent is unlikely to provide sufficient certainty for large scale industrial processors to invest in effective and meaningful treatment upgrades.

A handwritten signature in blue ink, appearing to read 'G. Willis', is positioned below the text. The signature is fluid and cursive, with a large initial 'G' and a trailing 'i'.

Gerard Matthew Willis

10 May 2019