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*In the matter of:*      Clauses 6 and 8 of Schedule 1 – Resource Management Act 1991 – Submissions on publicly notified plan change and variation – Proposed Plan Change 1 and Variation 1 to Waikato Regional Plan – Waikato and Waipa River Catchments

*And:*                      **Wairakei Pastoral Ltd**  
Submitter

*And:*                      **Waikato Regional Council**  
Local Authority

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**REBUTTAL OF EVIDENCE OF Dwayne Connell-McKay**  
**Block 2 Hearing Topics**

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*Dated:* 10 May 2019

## **REBUTTAL OF EVIDENCE OF Dwayne Connell-McKay**

### **Block 2 Hearing Topics**

#### **SUMMARY**

- 1 From reviewing the planning evidence from a number of submitters, I have concluded that the following points are the key areas of evidence that I wish to rebut;
  - 1.1 Priority Dates;
  - 1.2 Certified Industry/Sector Schemes;
  - 1.3 Discharge Rules;
  - 1.4 75<sup>th</sup> Percentile.

#### **Priority Dates**

- 2 Ms Young (Dairy NZ):
  - 2.1 In para 30 of her evidence Ms Young requests that the dates to complete FEP's associated with priority catchments should not be brought forward. Ms Young further expands on the implementation and resourcing issues associated with shorter timeframes.
  - 2.2 Ms Young's evidence conflicts with evidence from Dr Neale and Mr Williamson on behalf of WPL, who both state that in order to achieve Objective 3 by 2026 action needs to start now to allow for the response delay associated with environmental mitigations and actions.
  - 2.3 In order to start now requires FEP's and resource consents committing properties to undertake mitigation actions. In order to achieve Objective 3, I prefer the evidence presented on behalf of WPL and recommend implementation occurs sooner.

#### **Certified Industry/Sector Scheme**

- 3 Ms Kissick (DoC), Ms Young (Dairy NZ), Ms Hardy (Miraka) and Mr Willis (Fonterra) have all submitted evidence in support of maintaining a certified scheme to manage properties and enterprises.

- 3.1 I agree that such schemes would have the potential to significantly decrease the workload of WRC; I have proposed a consenting pathway as a Restricted Discretionary Activity that I consider enables schemes to manage the subject properties and enterprises (owned by their members) in a similar fashion.

### **Discharge Rules**

- 4 Ms Kissick (DoC), Ms Marr (Fish and Game) and Mr Willis (Fonterra) submitted evidence in relation to the lack of any s 70 RMA analysis undertaken to support the proposed permitted activity rules under s 15 RMA.
- 4.1 I have discussed this point in para's 192-196 of my evidence and concluded an alternative view that s 30(1)(c)(ii) of the RMA provides for WRC to control land use for the purposes of maintaining and enhancing water quality in water bodies.
- 4.2 Consequently, the land use rules in PC1 should provide an adequate mechanism to control the effects of activities on water quality.
- 4.3 But I do agree that a s 70(1)(b) analysis is required by the WRC for any PC1 permitted activity rules.

### **75<sup>th</sup> percentile**

- 5 Ms Kissick (DoC) and Ms Taylor (Ravensdown) both support the use of the 75<sup>th</sup> percentile as a method within the provisions of PC1 to determine an environmental limit.
- 5.1 Ms Kissick also recommends a 60<sup>th</sup> percentile for Lake FMU's.
- 5.2 I disagree with the 'percentile' method as an appropriate option for the following reasons:
- (a) The calculation/s utilise an NRP to derive a catchment wide environmental limit, given the inaccuracies inherent in OVERSEER as noted by the Reporting Officer and numerous other submitters it has generally been agreed that a NRP should only be used to compare on-farm scenarios.
- (b) The method requires WRC to obtain all the required NRP's within a catchment before the limit can be derived, to overcome this difficulty the Reporting Officer has proposed discretionary powers for the CEO of WRC to determine this limit, as discussed in my

evidence I do not consider such a solution is an appropriate manner to determine an environmental limit.

- 5.3 The identification of Vulnerable land, appropriate uses of it, and suitable mitigations as demonstrated via technical evidence on behalf of WPL can achieve the required environmental improvements without the subjective use of nutrient models and associated data.

**REBUTTAL**

**Block 2 Hearing Topics**

- 6 My name is **Dwayne Connell-McKay**. I have the qualifications and experience recorded in my statement of evidence filed in relation to the Block 1 Hearing Topics.
- 7 My rebuttal evidence has been prepared in accordance with the Code of Conduct for expert witnesses as set out in Section 7 of the Environment Court of New Zealand Practice Note 2014.
- 8 Relevant to my expertise, I wish to rebut the evidence of the following expert witnesses:

<b>Name</b>	<b>Submitter</b>
Ms Young	Dairy NZ
Ms Kissick	Department of Conservation
Ms Marr	Auckland / Waikato Fish and Game Council
Mr Willis	Fonterra Co-operative Group Ltd
Ms Hardy	Miraka Limited
Ms Taylor	Ravensdown Limited

## **Ms Young on behalf of Dairy NZ**

### **Priority Dates**

- 9 In para 30 of her evidence Ms Young requests that the dates to complete Farm Environment Plans (**FEP's**) associated with priority catchments should not be brought forward. Ms Young further expands on the implementation and resourcing issues associated with shorter timeframes.
- 9.1 Ms Young's evidence conflicts with evidence from Dr Neale and Mr Williamson on behalf of Wairakei Pastoral Limited (**WPL**), who both state that in order to achieve Objective 3 by 2026 action needs to start now to allow for the response delay associated with environmental mitigations and actions.
- 9.2 In order to start now requires FEP's and resource consents committing properties to undertake mitigation actions. In order to achieve Objective 3 I prefer the evidence presented on behalf of WPL and recommend implementation occurs sooner.

### **Certified Industry/Sector Schemes**

- 10 Retaining the Certified Sector Scheme (**CSS**) is discussed in Ms Young's evidence (para 54(b)). Ms Young is in support of retaining the provisions that enable the Waikato Regional Council (**WRC**) to certify such a scheme, and maintain the 'permitted' status of the rule as notified.
- 10.1 I agree that such a scheme would have the potential to significantly decrease the workload of WRC; I have proposed a consenting pathway as a Restricted Discretionary Activity that I consider enables schemes to manage the subject properties and enterprises in a similar fashion.

## **Ms Kissick on behalf of Department of Conservation**

### **Certified Industry/Sector Schemes**

- 11 Para's 164- 167 of Ms Kissick's evidence comment on her support of the CSS. As previously discussed above I do not support the CSS as proposed by the Reporting Officer.

### **Discharge Rule**

- 12 Ms Kissick in para 122 of her evidence, states the Reporting Officers' have not included an assessment of any s 15 discharges in association with the permitted activities as required under s 70 RMA.

- 12.1 I have discussed this point in para's 192-196 of my evidence and concluded an alternative view that s 30(1)(c)(ii) of the RMA provides for WRC to control land use for the purposes of maintaining and enhancing water quality in water bodies.
- 12.2 Consequently, the land use rules in PC1 should provide an adequate mechanism to control the effects of activities on water quality.
- 12.3 But I do agree that a s 70(1)(b) RMA analysis is required by the WRC for any PC1 permitted activity rules.

### **75<sup>th</sup> Percentile**

- 13 In para's 106-113, Ms Kissick states her support for the 75<sup>th</sup> percentile methodology as a way to achieve reductions in Nitrogen (N) leaching, and further explores its issues in applying the methodology to a Lake FMU.
- 13.1 Ms Kissick in turn recommends the adoption of a 60<sup>th</sup> percentile method for lake FMU's. I disagree with this proposal as an appropriate option for the following reasons:
- (a) The calculation/s utilise an NRP to derive a catchment wide environmental limit, given the inaccuracies inherent in OVERSEER as noted by the Reporting Officer and numerous other submitters it has generally been agreed that an NRP should only be used to compare on-farm scenarios.
  - (b) The method requires WRC to obtain all the required NRP's within a catchment before the limit can be derived, to overcome this difficulty the Reporting Officer has proposed discretionary powers for the CEO of WRC to determine this limit, as discussed in my evidence I do not consider such a solution is an appropriate manner to determine an environmental limit.
  - (c) The identification of Vulnerable land, appropriate uses of it, and suitable mitigations as demonstrated via technical evidence on behalf of WPL can achieve the required environmental improvements without the subjective use of nutrients models and associated data.

## Rules

- 14 I disagree with Rule 3.11.5.4 needing to be a Restricted Discretionary Activity as per para 150 of Ms Kissick's EIC, I prefer 3.11.5.4 (Controlled Activity) as proposed in my evidence.
- 14.1 I consider the ability to require a property to calculate a NRP, undertake a Vulnerable land assessment and demonstrate how the appropriate mitigations will be applied via a FEP, which has been prepared by a qualified person is appropriate for a Controlled Activity Rule.
- 15 I again disagree with Ms Kissick's para 163 that any land use change application should be a Non-Complying (**NC**) activity to ensure any application is sufficiently robust.
- 15.1 The NC land use change rules as recommended by the Reporting Officer are not linked to effects on the environment or the sensitivity of the receiving environment. I consider the RDA land use change rules that I have proposed in my evidence are robust and capable of ensuring the achievement of the Objectives.

## Ms Marr on behalf of Auckland / Waikato Fish and Game.

### Discharge Rule

- 16 In paras 6.30-6.35 Ms Marr discusses the implications of authorising discharges and the lack of any s 70 analysis.
- 16.1 I have discussed this point in para's 192-196 of my evidence and that s 30(1)(c)(ii) of the RMA provides for WRC to control land use for the purposes of maintaining and enhancing water quality in water bodies.
- 16.2 Consequently, the land use rules in PC1 should provide an adequate mechanism to control the effects of activities on water quality.
- 16.3 But I do agree that a section 70(1)(b) analysis is required by the WRC for any PC1 permitted activity rules.

## **Rules**

- 17 In principle I support a framework that is able to delineate activities based on risk (paras 6.42-6.48 Ms Marr's Evidence) for use in a Permitted Activity (PA) rule such as Rule 3.11.5.2. The appropriateness would depend on the ability of a property owner to be able to interpret the list and identify if they are capable of operating as a PA activity.

## **Mr Willis on behalf of Fonterra Co-operative Group Ltd**

### **Certified Industry/Sector Schemes**

- 18 In paras 6.1-6.4 of his evidence Mr Willis discusses CSS and the ability of them to replace specific functions that WRC would otherwise be required to complete. As discussed previously I disagree that CSS are appropriate as a PA, I also consider a resource consent is required in order to implement a FEP.

### **Discharge Rule**

- 19 On p 14 (para 6.24) under the heading 'Environmental risk of Rule 3.11.5.3 and section 70 of the Act', Mr Willis discusses the PA rules within PC1 and the lack of any s 70 RMA analysis. Mr Willis concluded that the rule as proposed by the Reporting Officer (Rule 3.11.5.8) is acceptable, I disagree with the need for Rule 3.11.5.8 for the same reasons discussed previously that s 30(1)(c)(ii) of the RMA provides for WRC to control land use for the purposes of maintaining and enhancing water quality in water bodies.

19.1 Consequently, the land use rules in PC1 should provide an adequate mechanism to control the effects of activities on water quality.

19.2 But I do agree that a section 70(1)(b) analysis is required by the WRC for any PC1 permitted activity rules.

## **Rules**

- 20 I agree with Mr Willis that all properties above 20 hectares should require a FEP (para 8.5 of his evidence), the actual limit could be less than 20 ha, but I agree that according to the rules as either notified or as amended by the Reporting Officer the degree of risk changes at 20 ha. I have agreed with the Reporting Officer in my evidence that in order to require an NRP or a FEP a consent is required.

**Definitions**

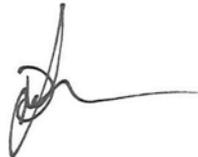
- 21 I agree with Mr Willis's amended definition for 'Farming', as per para 16.11 of his evidence.

**Ms Hardy on behalf of MIRAKA LIMITED****Certified Industry/Sector Schemes**

- 22 In paras 10.1-10.4 Ms Hardy submits the benefits of the CSS, and the manner in which it could be implemented. For the reasons I have stated previously I disagree with Ms Hardy's evidence to maintain CSS as a permitted activity.

**Ms Taylor on behalf of RAVENSDOWN LIMITED****75<sup>th</sup> Percentile**

- 23 In para 4.10(c) of her evidence Ms Taylor discusses the use of the 75<sup>th</sup> percentile, as discussed previously WPL has presented evidence on a replacement definition (Vulnerable land) more capable of delivering environmental gains, I therefore disagree with the use of the 75<sup>th</sup> percentile and the manner in which it uses the NRP to determine a limit.



**Dwayne Connell-McKay**

*Director-Thornton Environmental*

10 May 2019