

Form 5

SUBMISSION ON PUBLICLY NOTIFIED PROPOSAL FOR VARIATION

Clause 6 of Schedule 1, Resource Management Act 1991

To: Waikato Regional Council (**local authority** or **WRC**)

Name of submitter: Winton Smith

Submission on Variation 1 to Proposed Waikato Regional Plan Change 1

- 1 WRC notified proposed Waikato Regional Plan Change 1 (**PC1**) on 16 October 2016.
- 2 This is a submission on the following variation:
 - 2.1 Variation 1 to Proposed Waikato Regional Plan Change 1 – Waikato and Waipa River Catchments (**Variation**).
- 3 I could **not** gain an advantage in trade competition through this submission.
- 4 The specific provisions of the Variation that my submission relates to are: referred to below
 - 4.1 Map 3.11-1; 3.11.1 values; including whakawhanungatanga etc; 3.11.1.1; 3.11.1.2; Objective 6; Objective 1; Policy 15: 3.11.4.4 and; Table 3.11-1
- 5 **This submission:** summary:
 - 5.1 Supports the re-inclusion of the area (“north-east quadrant”) formerly withdrawn from the Waikato Regional Plan Change 1 – Waipa and Waikato River catchments but;
 - 5.2 Expresses grave concerns over the 80-year lifespan allowed before reaching acceptable pollutant concentrations Tables (3.11-1) and;
 - 5.3 Supports better expression of Māori rights and culture specifically through improved pollution reduction targets. This submission is limited to these three issues.
- 6 **Externalities:** Environmental externalities occur when the environmental impacts of production (and consumption) produce costs that are not

borne by the party generating them, but by wider society¹ and the environment itself. That is, environmental costs are not met by the polluter. In the absence of effective regulation, it is perfectly rational for most firms to externalise pollution costs. This submission assumes that the majority of pollution in targeted waterways arise as externalities from commercial operations.

- 7 **Resource Management Act 1991 (RMA):** re-inclusion of the north-east quadrant indicates limited progress towards the driving purpose of the RMA:
- 7.1 Section 5(1) and (2) promotes sustainable management of our natural resources that provides for people’s “wellbeing” “while” safeguarding the life-supporting capacities of our water and ecosystems, preserving resources for the reasonably foreseeable needs of our mokopuna, and avoiding, remedying or mitigating any adverse effects on the environment. It is clear that RMA is not only concerned with limiting adverse environmental impacts. It is also clear that “people and communities” is highly inclusive and “well-being” is not limited to economic affluence, but includes cultural values such as kaitiakitanga and mahinga kai and (sometimes unquantifiable, non-monetary) social values, such as spiritual cleansing, playing, swimming, fishing and laughing in clean, natural water.
- 8 **The National Policy Statement for Freshwater Management 2014**²
- 8.1 Amendments to the above NPS came into force 1 September 2017. This instrument includes mandatory minimum water quality standards³.
- 8.2 The preamble emphasises the deep cultural connection of *all* New Zealanders with fresh water, the centrality of Te Tiriti, and compulsory management of human and eco-system health while recognising that the NPS is only a first step towards improving freshwater management⁴. These provisions emphasise inclusion and equality of access to the benefits of clean fresh water, abundant aquatic life, and considerable progress beyond the 2017 NPS-imposed minimum standards. “National bottom lines in the national policy statement are not standards to aim for”⁵.

¹ Fabrício Eidelwein, Dalila Cisco Collatto, Luis Henrique Rodrigues, Daniel Pacheco Lacerda a, Fabio Sartori Piran; Internalization of Environmental Externalities: Development of a method for elaborating the statement of economic and environmental results; *Journal of Cleaner Production* 170 (2018) 1316 at 1316

² National Policy Statement for Freshwater Management 2014; Updated August 2017 to incorporate amendments from the National Policy Statement for Freshwater Amendment Order 2017

³ Above, n 2; appendix 2 at 30.

⁴ NPS above, n 2, at 4-5.

⁵ NPS above, n 2, at 5.

- 8.3 Table 1 below compares the mandatory minimum NPS levels (2017) for nitrogen and ammonia with levels in the north-east quadrant (~2029 and 2099). Proposed Var-1 levels are significantly better than minimum standards found in the NPS, and correlate to class A in that standard. However, the Var 1 levels propose virtually no improvement (and small deteriorations) over the 80-year period. This is at-odds with the intention of the NPS, which is to achieve continual improvement.

Table 1 Nitrogen and Ammonia: NPS and Var – 1 compared

	Nitrogen - annual median				Ammonia - annual median			
	NPS	Var 1	Var 1	NPS	NPS	Var 1	Var 1	NPS
	Min Std mg NO3- N/l	year 10	year 80	class equiv	Min Std mg NH4- N/l	year 10	year 80	class equiv
Waerenga Stm SH2 Maramarua	6.9	0.82	0.82	A	1.3	0.005	0.022	A
Whangamarino River Jefferies Rd Br	6.9	0.63	0.625	A	1.3	0.012	0.147	A
Mangatangi River SH2 Maramarua	6.9	0.11	0.11	A	1.3	0.005	0.038	A to B
Mangatawhiri River Lyons Rd Buckingham Br	6.9	0.01	0.013	A	1.3	0.003	0.011	A

- 8.4 Objective AA1 of the NPS recognises Te Mana o te Wai as an integral part of freshwater management, stating “Upholding Te Mana o te Wai acknowledges and protects the mauri of the water.”⁶ This provision is expressed in the present and not future tense, and at law, involves proper weighting and objective determination⁷. This approach requires a “meeting of two worlds”⁸. However, this ‘meeting’ does not appear evident in the targets proposed over the 80-year period.

- 8.5 Table 2 below compares the NPS levels (2017) for E.coli with those in the north-east quadrant (~2029 and 2099). There are no minimum standards for E. coli in the NPS, but councils must take

⁶ NPS above, n 2, at 7, 11.

⁷ *Land Air Water Association v Waikato Regional Council* EnvC Auckland A110/01, 23 October 2001 at [408].

⁸ *Williams J, Ngati Hokopu Ki Hokowhitu v Whakatane District Council* (2002) 9 ELRNZ 111 (EnvC).

certain steps to reduce levels. Notably, when levels exceed 540⁹, the regional council must notify the public that the water is unsuitable for recreation¹⁰. **It is remarkable in view of the level of emphasis of Māori values required in the NPS that 540 is the 80-year target for E.coli levels in Var-1.** Consequently, it is proposed that these waterways remain unswimmable, unsuitable for recreational purposes and incompatible with mahinga kai and other Maori practices and values for a further 80 years, suggesting improper weighting.

Table 2 E.coli: NPS and Var – 1 compared

E coli standards	NPS	Var 1	NPS	Var 1	NPS
	Min Std mg e.coli/100ml at 95th %ile	year 10	class equiv	year 80	class equiv
Waerenga Stm SH2 Maramarua	No min std	5098	E	540	A
Whangamarino River Jefferies Rd Br	No min std	4712	E	540	A
Mangatangi River SH2 Maramarua	No min std	5567	E	540	A
Mangatawhiri River Lyons Rd Buckingham Br	No min std	5108	E	540	A

8.6 “Where changes in the way communities use fresh water are required, the pace of those changes should take into account impacts on economic well-being”¹¹ In this context, Statistics New Zealand find a persistent and widening gap between income earned by Pakeha, and that earned by Māori and Pacifica¹². However this is only a partial measure of the well-being specified in the RMA, and Māori arguably place greater value (than Pakeha) in whanaungatanga, and its connections to kaitiakitanga, and mana whenua¹³, and by extension, mana motuhake¹⁴. The lack of pace of change expressed in the 10-80 year targets favours the

⁹ e.coli/100ml at 95th percentile

¹⁰ NPS, above n 1 at 44.

¹¹ NPS above, n 2, at 5.

¹² Cited in Window on Waiakto Poverty: Poverty Action Waikato - Te Whakatika Mahi Pohara i Waikato

¹³ Carwyn Jones A Maori Constitutional Tradition (2014)12 NZJPI 187.

¹⁴ Linda Te Aho Contemporary Issues in Maori Law and Society

polluter externalising costs, at the expense of those who are less well off, who may be Maori. This portion of society, whose importance is recognised in the RMA and NPS, are prevented, by that very pollution, from improving their economic well-being in ways defined by Maori, described above.

- 9 **Conclusion:** Given the scale and severity of the pollution, the ~10% reduction target in 10 years is considered achievable, but is hardly ambitious.
- 9.1 This target allows polluters to continue to externalise the costs of 90% of their pollution 10 years from the implementation date. This continuation denies other claimants with interests in fresh water, acknowledged by the RMA, of other potential benefits to their detriment. Those denied include people who are economically and culturally disadvantaged. Necessarily, their claims are virtually ignored, because the ~ 10% water quality improvements proposed are insufficient to allow for them such benefits as healthy spiritual connection; swimming; or the collection of safe kai.
- 9.2 Whilst the target is only a minimum, that polluters are largely businesses rationally predicts cost-minimisation tending towards pollution levels aimed and legal compliance only.
- 9.3 Further, the second and final stage for compliance occurs at year 80. Again, rationally, the self-interested business model predicts that polluters will externalise costs and continue to pollute at levels no lower than mandated levels; that is, the stage one, year 10 minimum levels, and that this will occur right up to year 79. Consequently, in the absence of further reduction stages, in one day short of 80 years, this plan reduces pollutants by an astonishingly small 10%. **Consequently, tighter, monitored, mandatory targets at 10-year intervals are recommended.**

Submission

- 10 I **support/oppose** the amendments made to the provisions in relevant part, and wishes to have them retained or amended as detailed above.

Reasons for the submission

- 11 See above.

Decision sought

- 12 Retain inclusion of the north-east quadrant, revise downwards 10 year and 80 year pollution targets; set further, monitored interim targets (10 yearly), better reflect Treaty recognition.

Decisions sought

Sign

[Winton Smith]

23 May 2018

Address for service:

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Rotorua 3015

Telephone: 021 029 66402

Email: smithwinton@gmail.com

Contact person: Winton Smith

From: [Healthy Rivers](#)
To: [Winton Smith](#); [Healthy Rivers](#)
Subject: RE: Submission: Var-1 to proposed Waikato Regional Plan Change 1 - Winton Smith
Date: Friday, 25 May 2018 8:28:53 AM

Hi Winton

Thank you for your prompt response. I will attach this email chain to your submission.

Kind regards

Keita

Healthy Rivers

WAIKATO REGIONAL COUNCIL | Te Kaunihera a Rohe o Waikato
P: 0800 800 401
F: facebook.com/waikatoregion
Private Bag 3038, Hamilton East, Hamilton 3240

From: Winton Smith <smithwinton@gmail.com>
Sent: Thursday, 24 May 2018 11:33 AM
To: Healthy Rivers <healthyrivers@waikatoregion.govt.nz>
Subject: Re: Submission: Var-1 to proposed Waikato Regional Plan Change 1

Hi Keita

Sorry for the omission.

No, I don't need to make an oral submission (and assume your second question relates to that type of submission)

Best regards,

Winton

On Thu, May 24, 2018 at 8:39 AM, Healthy Rivers
<healthyrivers@waikatoregion.govt.nz> wrote:

Hi

We've received your submission, however we're missing a little bit of information. We require the answers to the following two questions in order for your submission to be processed in full

- Do you wish to speak at the hearing in support of your submission?

- Would you consider present a joint case if others make a similar submission?

Could you please respond, as soon as possible, and I will ensure your answers are attached to your submission.

Kind regards

Keita

From: Winton Smith <smithwinton@gmail.com>
Sent: Wednesday, 23 May 2018 10:34 PM
To: Healthy Rivers <healthyrivers@waikatoregion.govt.nz>
Subject: Submission: Var-1 to proposed Waikato Regional Plan Change 1

Dear sir/madam

Please find attached and apologies for the slight delay.

Best regards
Winton Smith
021 029 66402

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