

**BEFORE THE**

Waikato Regional Council Hearing  
Commissioners

**IN THE MATTER**

of the Resource Management Act 1991

**AND**

**IN THE MATTER**

of Waikato Regional Proposed Plan Change 1 –  
Waikato and Waipā River Catchments

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**STATEMENT OF JANEEN ANNE KYDD-SMITH  
ON BEHALF OF THE WAIKATO AND WAIPĀ RIVER IWI  
IN RELATION TO THE HEARING TOPICS FOR HEARING BLOCK 1**

**(Submitter No. 74035)**

**15 FEBRUARY 2019**

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**WELLINGTON**

## **INTRODUCTION**

1. My name is Janeen Anne Kydd-Smith. I am a Director and Principal Planner of Sage Planning HB Limited, in Napier.

### **Qualifications and Experience**

2. I have the following qualifications and experience relevant to the evidence I shall give:

- a) I have a Bachelor of Arts (Geography) and a Master of Regional Resource Planning from the University of Otago;
- b) I have over 28 years' experience as a Planner working in local government and the private sector;
- c) I am an accredited Commissioner (with Chair Endorsement) under the Ministry for the Environment 'Making Good Decisions' programme.

3. I have the following relevant experience:

- a) Development Planner, Hastings District Council (February 1992 – July 1992);
- b) Policy Planner, Hastings District Council (July 1992 – April 1996);
- c) Senior Policy Planner, Hastings District Council (April 1996 – May 1998);
- d) Development Manager, Hastings District Council (June 1998 – September 2001);
- e) Environmental Planner, MWH New Zealand Limited (September 2001-January 2002);
- f) Planning Manager, MWH New Zealand Limited (January 2002 – December 2002);
- g) Senior Environmental Planner, Environmental Management Services Limited (February 2003 – August 2014);

- h) Director, Kydd-Smith Environmental Planning Limited (September 2014 to 31 March 2017); and
  - i) Director and Principal Planner, Sage Planning HB Ltd (1 April 2017 – present).
4. I have been engaged by the Waikato Waipā River Iwi (**River Iwi**) to prepare and present planning evidence in relation to their submissions and further submissions on Proposed Waikato Regional Plan Change 1 – Waikato and Waipā River Catchments (**PC1**), including Variation 1 to PC1.
5. I am familiar with the PC1 documents (as notified) and I was also initially engaged by the River Iwi to assist them with the preparation of their submissions and further submissions.

#### **EXPERT WITNESS CODE OF CONDUCT**

6. I confirm that I have read the 'Expert Witnesses Code of Conduct' contained in the Environment Court of New Zealand Practice Note 2014. My evidence has been prepared in compliance with that Code in the same way as I would if giving evidence in the Environment Court. In particular, unless I state otherwise, this evidence is within my sphere of expertise and I have not omitted to consider material facts known to me that might alter or detract from the opinions I express.

#### **PURPOSE AND SCOPE OF EVIDENCE**

7. This evidence provides a response to the Waikato Regional Council's Reporting Officers' Section 42A Report - Part A: Overview and Context; and Part B: Overall Direction, Values and Uses, Science and Economics, Objectives, Limits and Targets.
8. In preparing my evidence I have reviewed the following:
- relevant sections of PC1 (including Variation 1);
  - relevant sections of the River Iwi's submissions and further submissions;

- section 42A Officers' Report, particularly in relation to the relevant parts of River Iwi's submissions and further submissions; and
- Guardians Establishment Committee: "Restoring and Protecting the Health and Wellbeing of the Waikato River – Vision and Strategy for the Waikato River" / Te Ture Whaimana o Te Awa o Waikato (**Vision and Strategy**).

## EXECUTIVE SUMMARY

9. For the reasons given by the Reporting Officers in their section 42A report, I concur with the Officers' recommendations to:

- amend the opening statement of Section 3.11.1;
- not add a new definition of "springs";
- delete the first heading for each value in Section 3.11.1;
- retain the wording of the 'Primary Production' value in Section 3.11.1;
- amend the 'Water Supply' value in Section 3.11.1 by deleting the words "and health";
- not insert a new value (as requested by Hamilton City Council and Watercare) that articulates the importance of rivers in providing for municipal activities, specifically a drainage function for discharges;
- delete the 'Principal Reasons for Adopting the Objectives' and include within the body of the objectives the key points from the Reasons;
- add the words "at the latest" to Objective 1 as they are sufficient to address the River Iwi's submission and indicate that the achievement of the Vision and Strategy could occur within a shorter timeframe;
- not add the words "spiritual" and "and prosperity" to Objective 2 (as requested by the River Iwi);

- amend Objective 3 to make it clear that the water quality targets apply to both diffuse and point source discharges;
  - delete the words “considering the values and uses when” and “adaptive management” from Objective 4;
  - retain Objectives 5 and 6, as notified;
  - not include a new Objective 6 (as requested by the River Iwi); and
  - amend Policy 14 (as requested by the River Iwi).
10. I consider that there is an inconsistent use of terms in the value and use statements in Section 3.11.1, and in my opinion, it would be more appropriate to use the term “springs, rivers, lakes and wetlands” instead of “rivers, wetlands and springs” and “lakes, rivers and wetlands” (as recommended by the Reporting Officers).
  11. In my opinion, the heading for each objective should be retained, as the headings are helpful to plan readers by providing a summary of, and highlighting, the key topic associated with each objective.
  12. I consider that the recommendation to amend Objective 3, by deleting the words “[...] *ten percent of the required change [...] is indicated by the short term water quality attribute targets in Table 3.11-1*”, is inappropriate insofar as it removes the helpful connection stated about the short-term water quality attribute targets in Table 3.11-1 and the 10% required change between the current water quality and the 80-year water quality attribute targets in Table 3.11-1.
  13. Based on the evidence of Mr Olivier Ausseil (for the River Iwi), I consider that the term “Short-term water quality attribute targets” in Objective 3 should be replaced with the term “freshwater objectives”, which is more consistent with the NPS-FM and recent regional plans.
  14. With respect to whether the term ‘long-term water quality targets’ should be amended to read ‘long-term water quality states’ (as recommended by the Reporting Officers), I refer to the evidence of Mr Ausseil, but consider that the most appropriate language to use in this instance may more appropriately be a matter for legal submissions.

15. I consider that it is appropriate to retain Objective 4, with amendments, as it provides high-level direction for adopting a staged approach to achieving the Vision and Strategy as part of PC1 and it provides the justification for including Policies 5 and 7, from a plan hierarchy perspective.
16. The Reporting Officers recommend<sup>1</sup> that Table 3.11-1 be amended to include the term “desired water quality state”. However, there appears to be no justification given in the s42A report for inserting the word “desired”. In my opinion, it is not appropriate or necessary to include the word “desired” when referring to water quality targets/states, as the water quality targets in Table 3.11-1 align with the water quality objectives of the Vision and Strategy and adding the word “desired” could be perceived as diluting or ‘lowering the bar’ set by the Vision and Strategy. I therefore consider that Table 3.11-1 should not be amended to include the word “desired”.

## **EVIDENCE**

### **B2. VALUES AND USES**

#### **B2.4.1 Common submissions across sections**

##### *Alignment with NPS-FM*

17. The Officers recommend that the opening statement of Section 3.11.1 be amended to direct plan users to the specific sections of PC1 which give effect to the National Policy Statement for Freshwater Management (**NPS-FM**) and to give effect to the Vision and Strategy, which has a higher statutory weighting. I consider that the proposed amendment is appropriate, for the reasons given by the Officers.

##### *Waterbodies*

18. Variation 1 to PC1 proposes to insert references to ‘wetlands and springs’ in the description of the ‘Hononga ki te wai, hononga ki te whenua - Identity and sense of place through interconnections of land with water’, and in the ‘Ancestry and History’ value of Section 3.11.1.1 Mana Atua – Intrinsic Values. The River Iwi submission supports this

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<sup>1</sup> Paragraph 630 of the s42A report.

insertion and requests that it be retained, as the scope of PC1 includes the catchment of the Waikato and Waipā Rivers and by default includes all tributaries, streams, springs, lakes and wetlands that collectively discharge into and from the Waikato and Waipā Rivers. The River Iwi consider that the addition of the term 'wetlands and springs' does not diminish the term 'rivers' and would be consistent with the Collaborative Stakeholder Group's design of PC1.

19. I note that the Officers recommend that the insertion of 'wetlands and springs' in the above sections be retained so that the wider term 'rivers, wetlands and springs' is used.
20. Officers have also recommended that references to 'lakes and wetlands' be added to a number of the other value and use statements, so that the statements refer to 'lakes, rivers and wetlands'. When considered alongside the above recommendation, I note that there is an inconsistent use of terms across the value and use statements in Section 3.11.1. I therefore consider that it would be more appropriate to use the term 'springs, rivers, lakes and wetlands' instead of the terms 'rivers, wetlands and springs' and 'lakes, rivers and wetlands'.
21. I concur with the Officers' opinion<sup>2</sup> that adding a new definition in PC1 of 'springs' is unnecessary, for the reasons given by the Officers.

#### Values and uses structure

22. While not recommended, the Officers consider that an option may be to delete the values and uses from PC1 and record them in the Section 32AA Report<sup>3</sup>. I consider that the values and uses in Section 3.11.1 should be retained as they helpfully set the scene for the objectives, policies and rules that follow (including water quality targets/states).
23. I support the Officers' recommendation to delete the first heading for each value, as the current headings are confusing and are incorrectly duplicated.

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<sup>2</sup> Paragraph 173 of the s42A report.

<sup>3</sup> Paragraph 176 of the s42A report.

### Primary Production

24. I concur with the Officers' recommendation<sup>4</sup> (and the reasons given by the Officers) to not accept Oji Ltd.'s request to amend the language used in the 'primary production' value and the 'commercial, municipal and industrial use' value so that it is consistent, to avoid the implication that one sector could be prioritised over the other.

### Water supply

25. In response to Federated Farmers' submission, Officers recommend<sup>5</sup> that the 'water supply' value be amended by deleting the words "and health", as 'health' does not fit with the rest of the sentence and it is a subjective and uncertain term (in the context of how it is used in this value). I concur with the recommendation, for the reasons given by the Officers.

### New values

26. I concur with the Officers' recommendation to reject the request from Hamilton City Council and Watercare to insert a new value that clearly articulates the importance of rivers in providing for municipal activities, specifically a drainage function for discharges, for the reasons given by the Officers.<sup>6</sup>

## **B4. OBJECTIVES / Ngā Whāinga**

### **B4.2 Submissions on the objectives generally**

#### B4.2.1 Submissions and Analysis

27. In response to Forest and Bird's submission, the Officers recommend<sup>7</sup> that the 'Principal Reasons for Adopting the Objectives' be deleted and any key points from the Reasons should be extracted and included within the body of the objectives. I support the Officers' recommendation, as the amendments to the objectives will better reflect best practice Resource Management Act (RMA) plan drafting and avoid any ambiguity between the objectives and reasons.

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<sup>4</sup> Paragraphs 234-235 of the s42A report.

<sup>5</sup> Paragraphs 240 and 270 of the s42A report.

<sup>6</sup> Paragraphs 261-262 of the s42A report.

<sup>7</sup> Paragraph 313 of the s42A report.

### **B4.3 Submissions on specific objectives**

#### B4.3.1 Objective 1

28. The submission from the River Iwi requested that the 80-year timeframe (2096) for achieving the Vision and Strategy be retained, but that Objective 1 be amended to read as follows:

*“By 2096, at the latest, or sooner where practicable, discharges of nitrogen ...”*

29. The Officers recommend<sup>8</sup> that the request be accepted in part, insofar as Objective 1 is amended as follows:

*“By 2096 at the latest, a reduction in the discharges ...”*

30. I consider that the words “at the latest” are sufficient to address the River Iwi’s submission, as they indicate that the achievement of the Vision and Strategy could occur within a shorter timeframe.

31. The Reporting Officers also recommend that the submission from Fonterra be accepted<sup>9</sup>, which requests that the long term “water quality targets” be classified as “water quality states”. In the technical evidence of Mr Olivier Ausseil for the River Iwi<sup>10</sup>, he considers that:

*“...it seems logical that long-term aspirational goals be retained in PC1 to give effect to Te Ture Whaimana. However, these should retain a degree of flexibility to enable incorporation of new scientific knowledge and understanding and to avoid pre-determining the development of any future allocation of resources. Whilst the short-term thresholds in Table 3.11-1 should, in my opinion, be considered “freshwater objectives” in an NPSFM sense, the long-term thresholds should have a different status, and thus be called differently, possibly “long-term water quality states”.*

32. I note Mr Olivier’s observation, however, I consider that the most appropriate language to use in this instance may more appropriately be a matter for legal submissions.

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<sup>8</sup> Paragraphs 334 and 346 of the s42A report.

<sup>9</sup> Paragraph 335 of the s42A report.

<sup>10</sup> Refer to paragraph 44 of Olivier Ausseil’s evidence.

33. In paragraph 343 of the s42A report, the Officers consider that the heading for each objective (the text in bold) is potentially confusing, as it may differ from the actual wording of the objective that follows. The Officers therefore recommend that the headings be deleted.
34. I consider that, with appropriate amendments to overcome the consistency issue, the headings should be retained, as they are helpful to plan readers by providing a summary of, and highlighting, the key topic associated with each objective.

#### B4.3.2 Objective 2

35. The River Iwi submission requests that Objective 2 be amended to refer to “social, economic, spiritual and cultural wellbeing and prosperity”. The Reporting Officers recommend<sup>11</sup> that the River Iwi submission not be accepted because Objective 2, as notified, appropriately gives effect to the purpose of the RMA with respect to social, economic and cultural wellbeing.
36. I concur with the Officers’ recommendation, insofar as I consider that ‘spiritual’ and ‘prosperity’ are encompassed within the term ‘social, cultural and economic wellbeing’ derived from section 5 of the RMA and are, therefore, unnecessary.

#### B4.3.3 Objective 3

37. The River Iwi submission endorses setting a short-term (10 year) objective toward achieving the Vision and Strategy, recognising that the 10-year timeframe is intended to collectively achieve 10% of the journey towards achieving the Vision and Strategy.
38. The Reporting Officers recommend<sup>12</sup> that submissions seeking to erode from the requirement to achieve 10% reductions by 2096 are not adopted. I support this recommendation, as the Collective Stakeholder Group (CSG) agreed a sequenced and staged approach to achieving the Vision and Strategy. However, I consider that the recommendation to amend Objective 3, by deleting the words “[...] *ten percent of the required change* [...] *is indicated by the short term water quality*”

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<sup>11</sup> Paragraphs 361 and 368 of the s42A report.

<sup>12</sup> Paragraph 394 – 396 of the s42A report.

*attribute targets in Table 3.11-1*", is inappropriate insofar as it removes the helpful connection stated about the short-term water quality attribute targets in Table 3.11-1 and the 10% required change between the current water quality and the 80-year water quality attribute targets in Table 3.11-1.

39. The Reporting Officers also recommend<sup>13</sup> that submissions requesting amendments that make it clear that the targets apply to both diffuse and point source discharges be accepted. I concur with this recommendation for the reasons given by the Officers.
40. Mr Olivier Ausseil (for the River Iwi)<sup>14</sup>, considers that it seems more consistent with the NPS-FM and recent regional plans if the numerical thresholds contained in Table 3.11-1 (currently referred to in Objective 3 as "Short-term water quality attribute targets in Table 3.11-1") were called "freshwater objectives", as they were developed following the NPS-FM National Objectives Framework and it seems more consistent with the NPS-FM and recent regional plans if they were called "freshwater objectives".
41. On the basis of the above, I consider that Objective 3 should be amended as follows:

*"Actions put in place and implemented by 2096 to reduce diffuse and point source discharges of nitrogen, phosphorus, sediment and microbial pathogens, are sufficient to achieve the short-term freshwater objectives in Table 3.11-1, being ten percent of the required change between current water quality and the 80-year water quality attribute targets in Table 3.11-1. ~~A ten percent change towards the long-term water quality improvements is indicated by the short term water quality attribute targets in Table 3.11-1.~~"*

#### B4.3.4 Objective 4

42. Objective 4 provides for a staged approach, which the CSG agreed to achieving the Vision and Strategy over the 80-year timeframe specified in Objective 1. The River Iwi request in their submission that the wording of Objective 4 be retained.

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<sup>13</sup> Paragraph 397 of the s42A report.

<sup>14</sup> Refer to paragraphs 6 and 42 of Olivier Ausseil's evidence.

43. In response to submissions from Charion Investment Trust and Watercare, the Reporting Officers consider<sup>15</sup> that Objective 4 does not describe an outcome or future state, but instead outlines implementation methods and a programme for future intervention which are typically contained in policies and rules (s67(1)(b) and (c) of the RMA). As such, the Officers recommend that Objective 4 be deleted, noting that deleting the objective would have little consequence as these matters are well covered by Policies 5 and 7. Nevertheless, the Officers have analysed the relevant submissions and recommended amendments to Objective 4, should the Hearing Commissioners decide that Objective 4 is an objective and not an implementation method.
44. In my opinion, it is appropriate to retain Objective 4, with amendments (outlined below), as it provides high-level direction for adopting a staged approach to achieving the Vision and Strategy as part of PC1 and it provides the justification for including Policies 5 and 7, from a plan hierarchy perspective.
45. The Officers also recommend that submissions requesting the deletion of the words “adaptive management” be accepted, as the regime set out in PC1 to reduce contaminant losses does not align with the common understanding of “adaptive management” and it is unclear how people and communities would be able to undertake adaptive management to provide for their social, economic and cultural wellbeing under the PC1 framework. I therefore concur with the Officers’ recommendation to delete ‘adaptive management’.
46. I support the Officers’ recommendation<sup>16</sup> to delete the words “considering the values and uses when”, as there is a requirement to take action to achieve the attribute targets in Table 3.11-1 and retaining the words would inappropriately suggest that there is some discretion provided as to how that is done, depending on the values and uses.
47. Given the above, I consider that Objective 4 should be retained and amended as follows:

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<sup>15</sup> Paragraph 417 of the s42A report.

<sup>16</sup> Paragraphs 419 and 423 of the s42A report.

*“A staged approach to ~~change~~ reducing discharges of contaminants enables people and communities to ~~undertake adaptive management~~ to continue to provide for their social, economic and cultural wellbeing in the short term while:*

- a. ~~considering the values and uses when~~ taking action to achieve the freshwater objectives and long-term water quality states for the Waikato and Waipa Rivers in Table 3.11-1; and*
- b. recognising that further contaminant reductions will be required by subsequent regional plans and signalling ~~anticipated~~ future management approaches that will be ~~needed~~ required to meet Objective 1”.*

#### B4.3.5 Objective 5

48. The River Iwi request in their submission that the wording of Objective 5 (as notified) be retained, as Objective 5 is critical to PC1 and sets out that the Waikato and Waipā River Iwi (Tangata Whenua) values must be integrated into the long-term co-management of the Waikato and Waipā River catchments. The Reporting Officers recommend<sup>17</sup> that the wording of Objective 5 (except the heading and Reasons for Adopting Objective 5) be retained. I concur with the Officers’ recommendation, for the reasons given by the Officers.

#### B4.3.6 Objective 6

49. The River Iwi submitted that Objective 6 Whangamarino Wetland should be retained / re-inserted, as the wetland is of particular significance to Waikato-Tainui and must be restored and protected in a manner consistent with achieving the Vision and Strategy. The objective was specifically designed by the CSG and was initially supported by the River Iwi.
50. The Reporting Officers recommend that Objective 6 be retained as notified (except the heading and Reasons for Adopting Objective 6) or deleted so that Objectives 1 and 3 are relied on. The Officers’ preference is to delete Objective 6.

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<sup>17</sup> Paragraph 442 of the s42A report.

51. While I accept that Objective 6 repeats what is already covered by Objectives 1 and 3, given the particular significance of the Whangamarino Wetland to Waikato-Tainui, and the wetland's regional, national and international significance, I consider that it is appropriate to retain Objective 6.

B4.3.7 Submissions seeking new objectives

52. The River Iwi submitted that the water quality of all lakes within the Lakes Freshwater Management Units must be restored and protected in a manner consistent with achieving the Vision and Strategy, and that the Waikato Regional Council (**WRC**) needs to be proactive in managing land use activities within each lake catchment to achieve the water quality attribute targets in Table 3.11-1. The River Iwi requested that the following new Objective 3.11.2(6) be inserted into PC1:

***“Objective 6: Dunes, Riverine, Volcanic and Peat Lakes Freshwater Management Units***

*Restore and protect water quality within lakes by managing activities in the Lakes Freshwater Management Units to achieve the water quality attribute targets in Table 3.11-1.”*

Insert new Reasons for adopting Objective 6 to read:

***“Objective 6 seeks to ensure that the water quality of all lakes within the Lakes Freshwater Management Units is restored and protected as part of achieving the Vision and Strategy. This will require the implementation of a lake-by-lake approach guided by Lake Management Plans for the management of activities in the Lakes Freshwater Management Units over the next 10 years.”***

53. The Reporting Officers consider that Objectives 1 and 3 are inclusive of all FMUs, including the Lakes FMUs, and that the request for the new objective should not be accepted as it would duplicate the requirements set out in the other objectives. I concur with the Reporting Officer's recommendation, for the reasons given by the Officers.

## **B5.4. Targets and Limits (Table 3.11-1)**

### **B5.4.4.11 Overall recommendation**

54. The Reporting Officers recommend<sup>18</sup> that Table 3.11-1 be amended to include the term “desired water quality state”. However, there appears to be no justification given in the s42A report for inserting the word “desired”.
55. I note that GBC Winstone (Submitter No. 93) request that the Principal Reasons for Objectives 1 and 3 be amended to include the term “desired water quality states”, so that the terminology used is consistent with the NPS-FM. While the Reporting Officers recommend amending the Principal Reasons for Objectives 1 and 3 to refer to “water quality states” (instead of “water quality targets”) the recommendation does not include adding the word “desired”. As with Table 3.11-1, no justification is given in the s42A report for omitting the word “desired”.
56. In my opinion, it is not appropriate or necessary to include the word “desired” when referring to water quality targets/states, as the water quality targets in Table 3.11-1 align with the water quality objectives of the Vision and Strategy and adding the word “desired” could be perceived as diluting or ‘lowering the bar’ set by the Vision and Strategy. I therefore consider that Table 3.11-1 should not be amended to include the word “desired”.

## **B5.4.5 Staging and sub-catchment priority**

### **B5.4.5.1 Table 3-11.2**

57. The River Iwi request in their submission that Policy 14 be amended to read as follows, as they consider that the Waikato Regional Council needs to be proactive in managing improvements (restore and protect) to the water quality of the four lake types within the lakes Freshwater Management Units (FMUs):

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<sup>18</sup> Paragraph 630 of the s42A report.

*“...collecting and using data and information to support improving the management of land use activities within the lakes Freshwater Management Units.”*

58. The Reporting Officers recommend that Policy 14 be amended as requested by River Iwi, as the more explicit wording is in line with Policies 6 to 9 in relation to land use change within the Lakes FMUs. I concur with this recommendation.



Janeen Kydd-Smith

15 February 2019