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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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**STATEMENT OF EVIDENCE OF DWAYNE CONNELL-MCKAY**  
**Block 3 Hearing Topics**

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*Dated:* 5 July 2019

## STATEMENT OF EVIDENCE OF DWAYNE CONNELL-MCKAY

### SUMMARY

- 1 My Block 3 evidence focuses primarily on Schedule 1 (regarding FEP development and implementation) that is one of the two key provisions that will drive the implementation of PC1.
- 2 Schedule 1 as amended:
  - (a) Provides for nutrient budgeting to remain within the NRP baseline;
  - (b) Is consistent with and will successfully implement the relevant Objectives, Policies and Rules as amended by my Block 1, 2 and 3 evidence;
  - (c) Requires a suitable risk assessment of the subject land area, this includes the vulnerability of the land to associated diffuse discharges of phosphorous, nitrogen, sediment and microbial pathogens;
  - (d) Identifies the changes in practices and any mitigating actions required to manage water quality within the specific sub-catchment as determined via Table 3.11-1;
  - (e) Provides flexibility to enable continuous improvement and the ability to adopt suitable new technologies and practices;
  - (f) Provides direction on the requirements of an adaptive management approach;
  - (g) Includes the elements to enable the development of FEP/s when managing at a property, enterprise, sub-catchment or industry/sector scheme scale;
  - (h) Requires the stipulation of clear, specific and time framed actions;
  - (i) Requires monitoring and review to facilitate compliance and constant improvement;
  - (j) Provides for the use of an appropriate DST to support the risk assessment, evaluate mitigations and validate

that any diffuse N losses from the subject land will not exceed the calculated NRP; and

- (k) Contributes significantly to PC1 being able to effectively achieve Objective 3.

- 3 Key amendments are also made to other PC1 provisions in order to give full effect to the Schedule 1 amendments.

## BLOCK 3 HEARING TOPICS

### 1. BACKGROUND

- 1 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.
- 2 My statement of evidence has been prepared in accordance with the Code of Conduct for Expert Witnesses set out in Section 7 of the Environment Court of New Zealand Practice Note 2014.

#### Overview

- 3 The objectives, policies, rules, schedules and definitions as amended in my evidence for Blocks 1, 2 and 3 are attached for reference in **Appendix 5** (Plan Change 1 Strikethrough Version resulting from the WPL evidence) of my evidence.
  - 3.1 I consider that the amended Objectives give effect to the Vision and Strategy and the National Policy Statement on Freshwater Management 2014 (as amended 2017) (**NPS-FM**).
- 4 In my Block 3 evidence I review the remaining policies, methods, rules and schedules of Proposed Plan Change 1 to the Waikato Regional Plan (**PC1**) as notified and the ability of:
  - 4.1 The policies to achieve or implement the objectives (as per s 67 (1)(b) RMA); and
  - 4.2 The methods (including rules and schedules) to implement and achieve the policies (as per s 67 (1)(c) and 68 (1)(b) RMA).

### 2. STAGING THE TRANSITION TO THE 80-YEAR GOAL

- 5 Relevant PC1 provisions are: Objectives 2, 3, and 4 (Block 1); Policies 5 (Block 2), 7 and 17 (Block 3); and Methods 3.11.4.7, 3.11.4.8, 3.11.4.10, 3.11.4.11, and Method 3.11.4.12. (Block 3).
- 6 WPL submitted on the following provisions in relation to 'Staging the transition to the 80-year goal': Objectives 2, 3 and 4; and Policies 5 and 7.
- 7 The 'staged approach' as referenced in the PC1 provisions relates to two distinct timeframes, the first being ten years (2026) and the

second being 80 years (2096) from PC1 being notified. The first stage is reflected within Table 3.11-1 as the 'short term' freshwater objectives column, the second as the '80-year' freshwater objectives column.

- 8 As discussed in Block 2, Objective 3 is the first step towards achieving the long-term 2096 freshwater objectives and is essentially the only step to occur within the anticipated 2016-2026 lifespan of PC1, and, as per evidence of Dr Neale and Mr Williamson, implementing Objective 3 is critical to achieving Objective 1.

### **Policies**

- 9 Policies 5, 7 and 17 of PC1 as notified collectively seek to:

9.1 Set the course of action, timeframe and requirement of future reductions via further plan changes, set out how allocation may occur in the future, and provide further guidance on what other matters from the Vision and Strategy should be promoted within PC1 considerations.

### **Policy 7**

9.2 Policy 7 as notified gives direction for actions required to gather information through the Stage 1 process to inform the formation of a future allocation regime. This policy directs the information gathering required to assist in the achievement of Objective 1.

9.3 I agree with deleting Policy 7 as recommended by the Block 3 Section 42A Report (para 483) because the policy reads more as a non-regulatory method directing future research and actions to be undertaken to inform a future plan change. Is not useful for the current regulatory provisions.

9.4 I therefore recommend deleting Policy 7, as it does not support the achievement of outcomes anticipated within the lifespan of this plan change. The direction in this policy may be best suited to an internal Waikato Regional Council (WRC) strategy or Long-Term Plan to support WRC in its endeavour to increase the knowledge base required to achieve Objective 1.

9.5 In addition, the shift from hybrid rules (as notified) to land use rules focused on the regional council functions under s 30(1)(c)(ii) of the RMA potentially removes the question of future allocation.

### **Policy 17**

- 10 PC1 seeks to implement the Vision and Strategy in relation to farming activities (and associated diffuse discharges) by the Objectives (as amended), Policy 17 relating to the wider context of the Vision and Strategy appears on balance to be unnecessary.
- 11 Any wider implications of the Vision and Strategy should therefore be addressed by other chapters in the Waikato Regional Plan, or other documents and processes. I acknowledge that the WPL submission suggested that Policy 17 should be retained, but in my view, it should be deleted for the above reasons.

### **Summary-Staging the transition**

- 12 The Section 32 Report under the heading 'Relevance' (p 135) states that:

*The staged approach makes a start on reducing discharges, taking actions that contribute to the Vision and Strategy and gathering information, with the aim of preparing property level limits.*

- 13 Within the s 32 analysis Policies 5, 7 and 17 provide direction for the further development of the Waikato Regional Plan that will be required in order to achieve Objective 1 by 2096.

13.1 Amendments to Policy 5 have been addressed in my Block 2 evidence.

- 14 PC1 has a long-term aspirational goal in Objective 1 (2096), and a short-term goal within the life of the plan in Objective 3 (2026).

- 15 Determining what future plan changes may need to consider and seeking to influence these considerations within the provisions of PC1, is, in my opinion, not good practice and potentially derogates from the statutory process and consultation that will be required in the future to determine the most practicable, efficient and effective manner to achieve Objective 1.

- 16 I recommend deleting Policies 7 and 17.

### **Methods**

- 17 The Methods proposed in PC1 are in my opinion non-regulatory methods having an uncertain and immeasurable impact on PC1's success.

17.1 It is my recommendation to delete the non-regulatory methods from PC1.

- 17.2 Should they be retained I have included in **Appendix 1A** of my evidence amended methods to ensure that the methods are consistent with the regulatory provisions in PC1 and my amendments to them.

### **3. MAKING REDUCTIONS IN DIFFUSE DISCHARGES VIA CATCHMENT WIDE RULES AND THE NRP**

- 18 In my Block 2 evidence I concluded that:
- 18.1 Objective 1 seeks to achieve restoration and protection of water quality so that the 80-year freshwater objectives and limits/targets as defined in Table 3.11-1 are achieved.
- 18.2 Objective 3 is primarily focused on achieving the short-term improvements in water quality i.e. 10% of the required change between current water quality and the 80-year freshwater objectives as defined in short-term freshwater objectives and limits/targets in Table 3.11-1.
- 18.3 Evidence from Dr Neale in para 41 and 42 of his Block 2 evidence notes that in order to be able to achieve the 80-year freshwater objectives (and therefore achieve Objective 1) the first ten years are critical, therefore the actions required to achieve the short-term freshwater objectives must be implemented in a timely manner.
- 19 In Appendix 1 of my Block 2 evidence I recommended amendments to Schedule B of PC1 to include criteria by which any potential Decision Support Tool (**DST**) should be assessed. Mr Williamson also provided detailed science-based criteria (paras 193-198) in his Block 2 evidence. In my view Mr Williamson's criteria are a detailed subset that is covered by the more generic criteria that I provided. My criteria were based on those in the New Zealand Parliamentary Commissioner for the Environment Report.<sup>1</sup>

#### **TOPIC C7. COMMERCIAL VEGETABLE PRODUCTION**

- 20 The relevant provisions are: Policy 3 and Rule 3.11.5.5.
- Policy 3**
- 21 Policy 3 as notified provides guidance on the tailored approaches that relate specifically to commercial vegetable production.

<sup>1</sup> Parliamentary Commissioner for the Environment, *Overseer and regulatory oversight: Models, uncertainty and cleaning up our waterways* (December 2018).

- 21.1 Policy 3(d) appears to require a 10% blanket reduction in diffuse N loss from vegetable production across the sector with no stipulation on timing. As worded, this is likely to cause confusion when considering resource consents. The 10% reduction appears to be calculated from the relevant Nitrogen Reference Points (**NRP's**). I have proposed an amendment that could assist with the implementation of this policy.
- 21.2 WPL submitted to include a timeline to achieve the 10% reduction. The submitted timeline being Stage 1 is consistent with the Short-Term timeline as defined in Table 3.11-1.
- 21.3 Industry/sector schemes (as amended by my Block 2 evidence) will be an appropriate way for industry groups to apply for 'global' consents on behalf of their industry/sector scheme members.
- 22 I have therefore proposed some amendments to Policy 3 in **Appendix 1B** of my evidence. These amendments are made only in an attempt to improve the workability of the provisions.

**Rule 3.11.5.5.**

- 23 Rule 3.11.5.5 is a permitted activity rule until 1 January 2020; as such Farm Environment Plans (**FEP's**) are not required until a consent application is received. This would be on or after 1 January 2020.
- 24 I have proposed some amendments to Rule 3.11.5.5 in **Appendix 1B** of my evidence in an attempt to improve the workability and consistency of the provisions and ensure general consistency across the PC1 rules.

**TOPIC C9. FARM ENVIRONMENT PLANS**

- 25 Relevant provisions are: Method 3.11.4.3 and Method 3.11.4.11; and Schedule 1: Farm Environment Plans.
- 26 As discussed previously, I recommend the deletion of the non-regulatory Methods from PC1.

**Schedule 1**

- 27 Schedule 1 is the last provision to be considered in PC1 from the Section 32 Report's key policy area 'Making Reductions'. Schedule 1 sets out the requirements for the development and implementation of FEP's.



- 28 WPL submitted to amend Schedule 1 to allow any Decision Support Tools (**DST's**) to be used in relation to the PC1 provisions.
- 29 DST's were addressed in my Block 2 evidence through amendments to Schedule B. I stated that Schedule B should be folded into Schedule 1.
- 29.1 In drafting my Block 3 evidence I now consider that retaining the amended Schedule B as a separate schedule improves the usability of PC1.
- 30 The Vulnerable Land criteria referenced in my Block 2 evidence has been included in my amended Schedule 1, to be used for carrying out the risk assessment when developing a FEP.
- 31 In my view the main benefit of the FEP within a regulatory context, is to independently develop, document and lock in tailored, farming activity specific mitigation actions and Good Farming Practice (**GFP's**) against which properties and enterprises (for example) can then be audited. The mitigation actions will address Vulnerable Land, stock exclusion, riparian margins, winter grazing, cultivation on steep slopes, etc.
- 32 Within the provisions as amended in my Block 2 evidence a FEP is a core requirement across all consented activity rules; and is the pathway through which an existing or proposed land use activity demonstrates how potential adverse effects on water quality emanating from the farming practices have been identified, and what the associated mitigations should be to avoid or mitigate those effects.
- 33 Mr Ford and Mr Conland have provided evidence in their Block 3 statements, specifically addressing the contents and use of FEP's. I have relied on this evidence for direction on the amendments required within Schedule 1 so as to ensure any resultant FEP's are practicable and have the desired effect of implementing the Objectives, Policies and Rules as previously amended.
- 34 FEP's need to be scalable and useful across all intended users within PC1. This includes: properties, enterprises, sub-catchments, and industry/sector schemes.
- 35 The intended result of implementing a FEP is for the improved land use practices to contribute to the restoration or protection of the water quality in the sub-catchment and consequently the Freshwater Management Unit.
- 35.1 This will also achieve the purpose of controlling the land use to maintain and enhance water quality as required by s 30 (1)(c)(ii) of the RMA

- 36 As such the FEP is the dominant instrument (together with Table 3.11-1) for achieving Objective 3.
- 37 In order to develop a FEP that delivers what is required by the policies and rules I have amended it in my evidence; I consider the following components need to be included within Schedule 1:
- (a) Requirements to focus on water quality improvements within the sub-catchment as identified in Table 3.11-1 and the relevant policies, rules and consent conditions.
  - (b) A risk assessment that is based on the concept of Vulnerable Land and an appropriate process for identifying Vulnerable Land.
  - (c) That Good Farming Practices (**GFP**) to be used are benchmarked, with goals for improvements and provided with a rationale for their selection.
  - (d) The critical elements of an adaptive management approach as required by the relevant policies, rules and consent conditions
- 38 Within my Block 2 evidence I followed the s 32 analysis (Summary of effectiveness p173 of the Section 32 Report) of the notified provisions under the policy area 'Making Reductions'. I concluded the following in relation to FEP's:
- (a) That the implementation of FEP's should have a positive contribution to water quality, and proposed actions/mitigations should be directed at achieving the improvements required within the sub-catchment;
  - (b) Because implementation of PC1 can only be achieved through the implementation of all FEP's that will ultimately be required under PC1 in order to achieve the freshwater objectives in Table 3.11-1 by 2026, FEP's must be produced and implemented sooner rather than later;
  - (c) Accurate records and monitoring need to be a requirement of any FEP;
  - (d) Proposed actions and mitigations need to be time defined;
  - (e) Schedule 1 is pivotal to effectively delivering the relevant provisions of PC1 in a practicable way;

- (f) The success of PC1 relies on the ability of FEP's to achieve the required reductions in diffuse discharges of phosphorus, nitrogen, sediment and microbial pathogens.
- 39 Without the inclusion of the Vulnerable Land criteria in the FEP risk assessment, the reductions necessary to achieve Objective 3 are unlikely to be achieved. As discussed in my Block 2 evidence (p29) I do not consider that the 75<sup>th</sup> percentile process will be successful in achieving the improvements in water quality required to achieve Objective 3.
- 40 Schedule 1 as amended will result in the formulation of FEP's that will deliver the environmental gains associated with a Vulnerable Land assessment as presented in the WPL in Block 2 evidence by Mr Williamson (paras 167-181) and Mr Conland in his Block 1 evidence (para 63-64) provided illustrations of Vulnerable Land assessments and in Block 2 evidence (para 78) provided a definition of Vulnerable Land. My recommended amendments to Schedule 1 are set out in **Appendix 2** to my Block 3 evidence.

#### **Summary of Schedule 1**

- 41 Schedule 1 as amended:
- (a) Provides for nutrient budgeting to remain within the NRP baseline;
  - (b) Is consistent with and will successfully implement the relevant Objectives, Policies and Rules as amended by my Block 1, 2 and 3 evidence;
  - (c) Requires a suitable risk assessment of the subject land area, this includes the vulnerability of the land to associated diffuse discharges of phosphorous, nitrogen, sediment and microbial pathogens;
  - (d) Identifies the changes in practices and any mitigating actions required to manage water quality within the specific sub-catchment as determined via Table 3.11-1;
  - (e) Provides flexibility to enable continuous improvement and the ability to adopt suitable new technologies and practices;
  - (f) Provides direction on the requirements of an adaptive management approach;

- (g) Includes the elements to enable the development of FEP/s when managing at a property, enterprise, sub-catchment or industry/sector scheme scale;
- (h) Requires the stipulation of clear, specific and time framed actions;
- (i) Requires monitoring and review to facilitate compliance and constant improvement;
- (j) Provides for the use of an appropriate DST to support the risk assessment, evaluate mitigations and validate that any diffuse N losses from the subject land will not exceed the calculated NRP; and
- (k) Contributes significantly to PC1 being able to effectively achieve Objective 3.

42 In preparing this evidence I have reviewed similar provisions in some other regional plans. A management/environment plan that relates to the farming activities and the requirement to reduce resulting diffuse discharges is becoming a common concept across a number of regions (not all). The exact content of these plans and the number of constituents they seek to control varies, but the FEP's generally seek to achieve improvement via adoption of improved farming practices.

42.1 Generally, FEP's are used in conjunction with consent requirements. Although, Canterbury and Hawke's Bay (for example) have permitted activity rules that require a similar plan to be put in place, they also include a number of limiting criteria/conditions that must be complied with. The structure of these plans is different from PC1.

43 I do not consider that a permitted activity rule that relies solely on a FEP, either similar to that included in my evidence or further amended/simplified, could effectively be implemented. The flexibility required to prepare a FEP and the discretion required to determine compliance on any given day, would in my opinion be beyond that normally allowed for in a permitted activity.

## **TOPIC C10. MISCELLANEOUS**

### **Farming activities**

44 Following on from my Block 2 evidence the following miscellaneous amendments are required to PC1 to address the change to land use rules rather than hybrid rules.

45 Amend Policy 4 to read as follows:

**Farming activities:** The inclusion of rules that control the use of land for farming activities under section 9(2) of the RMA for the purposes of the maintenance and enhancement of the quality of water in water bodies and expressly allow the discharge of diffuse contaminants onto or into land in circumstances which may result in that contaminant entering water as a permitted activity or by resource consents granted in accordance with such land use rules.

- 46 Insert the following advice note after the heading “Chapter 3.11.5 Rules”:

**Advice note:**

The following rules are included in the Waikato Regional Plan under section 9(2) of the RMA to control the use of land for farming activities for the purposes of the maintenance and enhancement of the quality of water in water bodies and expressly allow the discharge of diffuse contaminants onto or into land in circumstances which may result in that contaminant entering water as a permitted activity or by resource consent granted in accordance with the abovementioned land use rules. The restrictions under section 15(1)(b) of the RMA are met by compliance with these rules. (Also refer to the definition of “Farming Activities”).

- 47 The purpose of these amendments is to ensure that any diffuse discharges associated with the s 9 RMA based land use rules have been expressly allowed by a rule in a regional plan as required by s 15 (1) of the RMA.

**Definitions**

- 48 The following amended or new definitions are for the following reasons required to give effect to PC1 and the WPL submissions.

**75th percentile leaching value**

- 49 In paras 155-157 of my Block 2 evidence I recommended that the “75th percentile nitrogen leaching value” should be deleted. This is due to:

- 49.1 The NRP (as notified) rewards farming activities with poor practices on heavy soils;
- 49.2 The lack of connection to water quality effects from NRP calculations in OVERSEER;
- 49.3 The complications with its calculation as a percentile;

- 49.4 Questionable deeming provisions proposed as a solution; and
- 49.5 Its implementation depends on full knowledge that will not be available during the PC1 period.

### **Adaptive management**

- 50 WPL submitted to include a definition of “Adaptive management”.

- 50.1 In para 109 of my Block 1 evidence I stated:

“WPL seek to retain adaptive management within the framework of PC1 as notified. Given the complexities of what the plan seeks to achieve, and the uncertainty surrounding the ability to actually achieve the desired outcomes and the science informing the plan-making process, adaptive management presents itself as the logical choice when seeking both short term and long-term environmental outcomes. It is also consistent with the precautionary approach embedded in the Vision and Strategy.”

- 50.2 As discussed in paras 110 and 111 of my Block 1 evidence, both the Vision and Strategy (Objective f) and the Waikato Regional Policy Statement (Objective 3.3) contain provisions providing direction to use the ‘precautionary approach’.

- 50.3 In my evidence for Blocks 1, 2 and 3 I have recommended to include the term in: Objective 4; Policies 2, 4, 5 and 6; Rules 3.11.5.6A and B, 3.11.5.7A, B and C; and Schedule 1. The definition should be amended to read as follows:

**Adaptive management:** means the approach to managing risk or uncertainty whilst enabling development and/or use and ensuring the protection of identified environmental values. Any adaptive management approach must satisfy the following:

- (a) The need for good baseline information about the receiving environment;
- (b) Provide for effective monitoring of adverse effects using appropriate indicators;
- (c) That thresholds are set to trigger remedial action before the effects become overly damaging; and

- (d) That any effects that might arise can be remedied before they become irreversible.

### **Decision support tool**

- 51 The WPL submission requested that a new definition of DST's to be included in PC1 as a consequence of the amendments made to Schedule B and Schedule 1. My recommended amendment is as follows:

**Decision Support Tool:** means an information and accounting framework that can be used to assist with analysis and decision-making processes.

### **Enterprise**

- 52 WPL submitted to amend a number of the provisions of PC1 so as to enable a regulatory pathway to manage land use at an 'Enterprise' scale.
- 52.1 In Appendix 1 of my Block 2 evidence I recommended that the following provisions that directly related to 'Enterprises' should be amended: Policies 1, 2, and 4; Rules 3.11.5.2, 3.11.5.6A, 3.11.5.7A, 3.11.5.7B and 3.11.5.7C; and Schedules B, C and 1.
- 52.2 In writing this evidence I have reviewed a number of regional plans and their definitions for both 'Property' and 'Enterprise' to identify any common interpretation/s.
- 52.3 What was consistent among the regional plans reviewed was that the definition for 'Property' was primarily dependent on the titles/parcels of land being 'contiguous' or 'adjacent'.
- (a) Single ownership of the overall collection of titles is more often directly associated with the term 'Property', whereas 'Enterprise' is always associated with multiple ownership of the collection of titles being used.
- 52.4 Whilst the Waikato Regional Plan does not (currently) have an operative definition for 'Enterprise', a number of other regions use the term 'Enterprise' for land/titles/parcels regardless of location or ownership that is managed as a single operational unit.
- 52.5 I recommend retaining the definition of 'Enterprise' as notified in PC1 because it will streamline the number of consents required under PC1 in a similar way to sub-catchment and industry/sector scheme consents that manage land at scale.

### **Farming activities**

- 53 Resulting from my Block 2 evidence, the following amendment to the definition of “Farming activities” is proposed.

**Farming activities:** for the purposes of Chapter 3.11 includes:

- (i) The grazing of animals or the growing of produce, including crops, commercial vegetable production and orchard produce, but does not include planted production forest or the growing of crops on land irrigated by consented municipal wastewater discharges; and
- (ii) Expressly allows for and includes the associated diffuse discharges associated with the land use.

### **Mitigation measures/actions**

- 54 WPL submitted to include a new definition to support the terminology used in the notified PC1 provisions as amended in my evidence.

- 54.1 I have further amended the proposed definition so that the term is applicable across all provisions of PC1 as follows:

**Mitigation measures/actions:** means the actions to be undertaken and committed to within a Farm Environment Plan, that manage the effects on water quality of diffuse discharges from the land use.

## **5. PRIORITISATION AND SUB-CATCHMENT PLANNING**

- 55 The relevant objectives are Objective 1 and 3; these have both been discussed in paras 72 and 73 of my Block 2 evidence.

55.1 Objective 1 seeks to achieve restoration and protection of sub-catchment water quality so that the 80-year freshwater objectives and limits/targets as defined in Table 3.11-1 are achieved.

55.2 Objective 3 is primarily focused on achieving the short-term improvements in sub-catchment water quality i.e. 10% of the of the required change between current water quality and the 80-year water quality objectives as defined in the short-term freshwater objectives and limits/targets in Table 3.11-1.



## TOPIC C8. SUB-CATCHMENT PLANNING

- 56 The relevant provisions are: Method 3.11.4.5 and Method 3.11.4.9; and Policy 9.
- 57 As discussed previously, I recommend deleting the non-regulatory methods, and I recommend that Policy 9 should be amended as discussed further below.
- 58 Sub-catchment planning is an integral part of PC1 as notified. The partitioning of the wider Waikato and Waipa river catchments into sub-catchments is used to define 74 sub-catchments as defined in Table 3.11-2 (or 75 including WPL's submission for Sub-catchment 66 to be subdivided into 66 A & B).
- 58.1 These sub-catchments are then used in determining existing (current state) water quality and the desired water quality for 2026 and 2096 (Objectives 1 and 3 via Table 3.11-1).
- 58.2 Within the notified provisions of PC1 sub-catchments are referred to in the objectives, policies, rules, and schedules.
- 58.3 The Section 32 Report (p220) evaluates the *"appropriateness of the provisions of Plan Change 1 to achieve the objectives, with regard to prioritisation and sub-catchment planning."*
- 58.4 The Section 32 Report also concludes (p235) among other points that *"... using sub-catchment scale planning to identify and co-ordinate cost effective action ..."* is an appropriate way to achieve the objectives.
- 59 To ensure a tailored approach (as directed by Policy 2) is available within a regulatory context in relation to sub-catchments I recommended in Block 2 amended plan provisions in that further build on the sub-catchment planning (e.g. Method 3.11.4.5) undertaken by WRC within PC1.
- 60 The inclusion of rules that specifically enable sub-catchment planning to be consented at scale via restricted discretionary activity resource consents will assist in streamlining processes under PC1. A small number of sub-catchment resource consents would have a significant impact on reducing the number of individual resource consents that WRC would need to receive and process.
- 61 The ability to manage land and its contaminant losses via a sub-catchment resource consent provides the most integrated way to achieve the Vision and Strategy.

61.1 I therefore consider that sub-catchment scale consents are an essential component of PC1 and should be specifically provided for by rules.

### **Policy 9**

62 WPL submitted on Policy 9 to incorporate the ability to utilise sub-catchment planning within a regulatory/consenting framework, along with adaptive management and mitigations.

63 As drafted Policy 9 relates to non-regulatory work and the manner in which future consent holders may be able to gain benefit from the gains made from edge of field type mitigations.

64 My evidence in Block 2 (paras 71, 89, 204.4) supports the sub-catchment approach and the rationale behind using both an adaptive management and a mitigation approach within a sub-catchment resource consent. In summary:

64.1 Ensuring that adaptive management is provided for within PC1, and that it can be utilised as a tool to manage uncertainty and change is recognised as a suitable means to implement the 'precautionary approach' and supports a sub-catchment framework. The investigation and identification of mitigations relative to the freshwater objectives being sought for the sub-catchment will need to be determined and the required actions committed to within an FEP.

64.2 Adaptive management should be included within the PC1 provisions so that mitigations and actions can be monitored within resource consents.

65 My amendments to Policy 9 seek to ensure PC1 is enabled to consider sub-catchment planning explicitly in a regulatory context as a way to achieve the Objectives.

## **6. COMMENTS ON SECTION 42A REPORT**

### **Enterprise/Property**

66 The Block 3 Section 42A Reports discusses the following points in relation to enterprises:

66.1 Paragraph 556: lack of clarity about how subdivision, amalgamation, leases and enterprises will be addressed.

66.2 Paragraph 558: NRP should run with the land.

66.3 Paragraph 560: who owns NRP is unclear.

- 67 The same issues will apply to industry/sector schemes. Additionally, the NRP is a calculation that produces a number that is included as a consent condition. If circumstances change the condition will need to be changed. To address the points raised in the report I recommend that the following advice note should be included in Schedule 2 in relation to Rules 3.11.5.6A, 3.11.5.6B, and 3.11.5.6C and managing farming activities at scale:

**Advice note: Enterprise, sub-catchment, and industry/sector scheme consents**

The resource consent application (and any AEE) should define the ultimate potential geographical extent and NRP.

The application will include a list of the initial members and the Schedule A information regarding the properties owned by them.

New members will be able to enter the enterprise/scheme etc at any time during the 25-year life of the land use consent where they come within the **envelope** of the ultimate potential geographical extent and NRP defined by the application (and any AEE) (scope) subject to:

A. Notice of new members entering the enterprise/scheme etc being given to WRC within 20 working days of entry and the Schedule A information regarding the properties owned by the new members being provided to WRC at the same time.

B. The NRP condition being changed to reflect the new increased NRP provided that this does not exceed the envelope of the ultimate potential NRP defined by the application (and any AEE).

C. An amended/updated FEP (if necessary) being filed with WRC at the same time.

Under this scenario (points 1-3 above) a new consent will **not** be required and new members can enter the enterprise/scheme etc without enlarging the existing consent (i.e. keeping within the envelope).

Where the resource consent application (and any AEE) only defines the **exact** geographical extent and NRP then a new consent **will** be required for the whole enterprise/scheme etc plus the new properties entering in order to allow new members to enter the enterprise/scheme etc, because they would otherwise exceed the consented envelope and enlarge

the consent. The new application would need to satisfy all relevant PC1 rules.

Members may **exit** from the enterprise/scheme etc at any time subject to:

A. Notice of the members exiting from the enterprise/scheme etc being given to WRC within 20 working days of exit and the Schedule A information regarding the properties owned by the exiting members being provided to WRC at the same time.

B. The NRP condition being changed to reflect the new reduced NRP resulting from the exit.

C. An amended/updated FEP (if necessary) being filed with WRC at the same time.

A new enterprise/scheme etc consent would not be required for the remaining members i.e. they would continue to operate under the original enterprise/scheme etc consent (as amended).

The exiting member(s) would need to seek a completely new consent for their land under the PC1 rules.

## 7. SECTION 32 EVALUATION

68 I have approached this evaluation process by providing a summary analysis of the PC1 provisions considered in my evidence against the following criteria from s 32(1)(a) and (b) of the RMA:

*(1) An evaluation report required under this Act must—*

*(a) examine the extent to which the objectives of the proposal being evaluated are the most appropriate way to achieve the purpose of this Act; and*

*(b) examine whether the provisions in the proposal are the most appropriate way to achieve the objectives by—*

*(i) identifying other reasonably practicable options for achieving the objectives; and*

*(ii) assessing the efficiency and effectiveness of the provisions in achieving the objectives; and*

*(iii) summarising the reasons for deciding on the provisions; and ...*

69 I have used these criteria to assess the following PC1 provisions and my recommendations and amendments;

69.1 In Block 1:

(a) Objectives 1, 2, 3, 4, 5, and 6:

69.2 In Block 2:

(a) Policies 1, 2, 3A, 4, 5, 6, 8, 10, 11, 12, 13, and 16;

(b) Rules 3.11.5.1, 3.11.5.1A, 3.11.5.2, 3.11.5.3, 3.11.5.4, 3.11.5.6 A/B/C and D, 3.11.5.7 A-D, 3.11.5.8, and 3.11.5.9;

(c) Schedules A, B, C, and 2;

69.3 In Block 3:

(a) Policies 3, 7, 9, and 17;

(b) Rule 3.11.5.5;

(c) Schedule 1.

70 The evidential base for these amendments is summarised in **Appendix 3** to my Block 3 evidence.

### **Objectives**

71 The PC1 Objectives are in my view suitable for promoting sustainable management as detailed in the Vision and Strategy and the NPS-FM, subject to the amendments recommended in my evidence.

72 In summary, my Block 1 evidence recommended the following key amendments to Objectives 1-6 to promote sustainable management and give effect to the Vision and Strategy and the NPS-FM:

(a) Aligning the wording 'Protect and Restore' as per the Vision and Strategy;

(b) Aligning the short-term and long-term outcomes with Table 3.11-1;

(c) Ensuring that the social and economic wellbeing of the community is recognised as important;

- (d) Retaining adaptive management as a critical approach to implement the precautionary principle as required by the Vision and Strategy;
- (e) Articulating how the 'Staged approach' will be achieved;
- (f) Providing a regulatory pathway for consenting at scale (enterprises, sub-catchments, and industry/sector schemes);
- (g) Including land returned from Treaty settlements.

### **Policies and Rules**

73 In Blocks 2 and 3 my evidence reviewed the relevant policies and rules and concluded:

73.1 That in my opinion two provisions specifically, if left unamended would significantly hinder, if not prevent, the ability to both implement the plan and achieve Objective 3 are:

- (a) The 75th percentile leaching value for each FMU that cannot be assessed until all NRP's have first been determined i.e. until 1 July 2026 (para 198 Block 2 evidence); and
- (b) The priority dates that prevent landowners from obtaining resource consent and that delay the development and implementation of FEP's and their influence on achieving Objective 3 (para 102 Block 2 Evidence).

73.2 The implementation of the rules and policies as notified would (in my view) have significant issues and would not implement the Objectives unless they are amended.

73.3 The policies and rules in PC1 as notified are not the most appropriate way to achieve the Objectives.

73.4 Consequently, the PC1 provisions as notified, in my opinion are not the most effective nor are they the most efficient manner to achieve the objectives.

74 Mr Ford in his evidence also concluded that as notified, the PC1 provisions would not provide opportunities for economic growth and employment.

- 75 Considering the technical evidence provided on behalf of WPL, the following is a summary of what I have identified through my analysis of the provisions of PC1 as “*other reasonably practicable options for achieving the objectives*” that are available to implement the (amended) PC1 Objectives:
- 75.1 Deleting the 75th percentile as a method to improve farming practices.
  - 75.2 Amending the provisions of PC1 to enable the achievement of Objective 3 (Table 3.11-1) by 2026;
  - 75.3 Including adaptive management within the policies and rules as a means to implement the ‘precautionary principle’ so that mitigations and actions can be monitored within FEP’s and resource consents;
  - 75.4 A clearly defined ability to utilise other DST’s alongside or instead of OVERSEER, to develop NRP’s and to better inform land use decisions within FEP’s and resource consents;
  - 75.5 Focusing on the actions and mitigations within FEP’s to be more practicable by achieving or maintaining (as relevant) the freshwater objectives of the sub-catchment;
  - 75.6 Introducing Vulnerable Land criteria into the rules and Schedule 1 to assist in determining risk and appropriate mitigating actions;
  - 75.7 Achieving increased efficiency and improved environmental outcomes by amending the rules and policies to provide regulatory pathways for enterprises, sub-catchment, and industry/sector scheme resource consents;
  - 75.8 Limiting the use of the NRP solely as a method to compare the intensity of farming activities within a FEP for a consented activity and generating consent conditions;
  - 75.9 Improving economic, social and environmental outcomes by amending the rules and policies providing a pathway for land use change where the freshwater objectives for the sub-catchment are met under Table 3.11-1.
- 76 In **Appendix 5** of this evidence I have included all provisions that I recommend should be amended from my evidence in Blocks 1, 2 and 3 to address the above points. For completeness, **Appendix 4** correlates the amended PC1 provisions with the WPL submission points.

## Summary

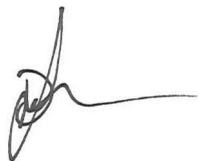
- 77 Having now been able to review the PC1 provisions as a whole (with the exception of Table 3.11-1), I have evaluated them collectively and consider that as amended the PC1 provisions:
- (a) Are able to achieve the Objectives;
  - (b) Are capable of being implemented;
  - (c) Are enforceable;
  - (d) Are logical and able to be interpreted to a reasonable degree by a layperson;
  - (e) Are not reliant on the provision of information by third parties; and
  - (f) Are future proofed as far as being able to adopt evolving technologies and farming practices.
- 78 As a result of the WPL evidence and the analysis described above, I consider the Objectives (**Appendix 5**) are the most appropriate way to achieve the purpose of the RMA, and having regard to efficiency and activeness, consider the provisions (Appendix 5) are the most appropriate for achieving the Objectives.

## 8. CONCLUSIONS

- 79 FEP's need to be scalable and useful across all intended users within PC1, this includes:
- (a) Properties;
  - (b) Enterprises;
  - (c) Sub-catchments; and
  - (d) Industry/sector schemes.
- 80 The intended result of implementing a FEP is for the improved land use practices to contribute to the restoration or protection of the water quality in the sub-catchment and consequently the Freshwater Management Unit.
- 80.1 This will also achieve the purpose of controlling the land use to maintain and enhance water quality as required by s 30 (1)(c)(ii) of the RMA



- 81 FEP's are the dominant instrument for achieving Objective 3.
- 82 Without the inclusion of the Vulnerable Land criteria into the FEP risk assessment, the changes in farming practices (and diffuse discharge reductions) necessary to achieve Objective 3 are unlikely to be achieved.
- 83 The inclusion of rules that specifically enable sub-catchment planning to be consented at scale via restricted discretionary activity resource consents will assist in streamlining process under PC1.
- 84 The ability to manage land and its contaminant losses via a sub-catchment resource consent together with enterprises and industry/sector schemes provides the most integrated way to achieve the Vision and Strategy.
- 85 Policy 9, as amended, connects the use of sub-catchment planning in a regulatory manner to the policies and rules as a way to achieve the Objectives.
- 86 As noted above, as a result of the WPL evidence and the analysis described above, I consider the Objectives (**Appendix 5**) are the most appropriate way to achieve the purpose of the RMA, and having regard to efficiency and activeness, consider the provisions (Appendix 5) are the most appropriate for achieving the Objectives.



**Dwayne Connell-McKay**

*Thornton Environmental*

5 July 2019