

BEFORE THE INDEPENDENT HEARINGS PANEL FOR PROPOSED
WAIKATO REGIONAL PLAN CHANGE 1

IN THE MATTER OF the Resource Management Act 1991

AND

IN THE MATTER OF Proposed Waikato Regional Plan Change 1 –
Waikato and Waipā River Catchments: Part A and
Part B

**PRIMARY STATEMENT OF EVIDENCE BY PHILIP HUNTER MITCHELL ON
BEHALF OF OJI FIBRE SOLUTIONS (NZ) LIMITED
FOR HEARINGS PARTS A AND B**

15 FEBRUARY 2019

1. SUMMARY

- 1.1 The collaborative process adopted by the Waikato Regional Council for PC1 was not fully representative of key stakeholders in the Waikato Region and as such, there is a strong feeling of disenfranchisement. Perhaps more importantly, that alternative ways of addressing the issues facing management of water quality in the Waikato and Waipā Rivers were not fully canvassed. In particular, critical aspects of the recommendations to the Council from that process were by majority vote only and they cannot be taken as representing a consensus of either stakeholder or community views. While PC1 is intended to focus on all rural properties in the region, it also significantly affects point source discharge activities, notwithstanding that such inputs were underrepresented in the collaborative process.
- 1.2 PC1 needs to establish consistent ground rules for the management of diffuse sources of nitrogen, phosphorus, sediment and microbial pathogens that build upon what is already expected of consent holders under the Waikato Regional Policy Statement and Waikato Regional Plan. These provisions should not duplicate or re-interpret what is already required in relation to point source discharges. The alternative holistic approach proposed in the OjiFS submissions (or similar approaches) provides what I consider to be an appropriate pathway that encourages best practice options, discourages reliance on those historical and existing land use management practices contributing to poor catchment water quality and provides consistency with how point source discharge consents are managed.
- 1.3 There are several provisions, expectations, drivers and imperatives already applicable to point source activities that in my opinion should apply equally to the activities addressed under PC1. PC1 should seek to ensure that best practice land use techniques are implemented and refined over time to ensure that the restoration and protection of the Waikato and Waipā Rivers is achieved in the timeframe required.

- 1.4 The Nitrogen Reference Point approach effectively “grandparents” existing land use behaviour in terms of the use of nitrogen, including those with poor land management practices. Grandparenting acts as a disincentive to implementing alternative and innovative land management practices and uses that may be more suitable to a particular land holding. In effect, it rewards the recalcitrant and penalises the proactive. It means that meaningful progress in terms of improved water quality associated with improved and innovative land management will be impeded rather than facilitated.

- 1.5 The alternative approaches as set out in the OjiFS submission or described as a Natural Capital Approach are most likely to provide what I consider to be an effective pathway to ensuring that the restoration and protection of the Waikato and Waipā Rivers is achieved in the timeframe required.

2. INTRODUCTION

2.1 My full name is Philip Hunter Mitchell.

QUALIFICATIONS AND EXPERIENCE

2.2 I hold the degrees of Bachelor of Engineering (Hons) and Doctor of Philosophy, both from the University of Canterbury.

2.3 I am employed by Mitchell Daysh Limited, an environmental consulting practice with offices in seven locations around New Zealand that I co-founded in 2016. Previously I was a Director of Mitchell Partnerships Limited, an environmental consultancy I established in 1997, and which was merged with another firm to form Mitchell Daysh Limited. Prior to that, I was the Managing Director of Kingett Mitchell & Associates Limited, a firm that I co-founded in 1987.

2.4 I am a past president and founding executive committee member of the Resource Management Law Association, a full member of the New Zealand Planning Institute and in 2015 was a recipient of the New Zealand Planning Institute's Distinguished Service Award.

2.5 I have practiced in the field of resource management for the past 33 years during which time I have had a lead resource management role in many significant projects throughout New Zealand.

2.6 I have acted on several Ministerial advisory panels established to review aspects of the Resource Management Act 1991 (**RMA** or **Act**) and was a member of the Technical Advisory Group established to review sections 6 and 7 of the RMA.

2.7 My principal areas of practice include providing resource management advice to the private and public sectors; facilitating public consultation processes; undertaking planning analyses; managing resource consent acquisition projects; and developing resource consent conditions.

- 2.8 I have acted as a Hearings Commissioner on some 35 occasions, many in the role of Hearing Chair.
- 2.9 I was also appointed jointly by the Minister for Canterbury Earthquake Recovery and the Christchurch City Council as a Hearings Commissioner for the replacement of the Christchurch City District Plan (the district plan that is intended to facilitate the rebuilding of Christchurch).
- 2.10 I have been involved in many resource consent and plan review processes and have presented evidence in relation to such activities on many occasions. In that role I have been involved in numerous resource consent applications for energy, industrial and agricultural sector activities where significant improvements in point source discharge quality have been achieved.
- 2.11 Whilst I note that this is not an Environment Court hearing, I confirm that I have read and am familiar with the Code of Conduct for expert witnesses contained in the Environment Court Practice Note 2014. I agree to comply with that Code. Other than where I state I am relying on the evidence of another person my evidence is within my area of expertise. I have not omitted to consider material facts known to me that might alter or detract from the opinions that I express.

SCOPE OF EVIDENCE

- 2.12 I have been asked by Oji Fibre Solutions (NZ) Limited (**OjiFS**) to provide evidence in relation to the matters to be addressed in the Block 1 hearing¹ for the Waikato Regional Council Proposed Plan Change 1 - Waikato and Waipā River Catchments (**PC1**) covering submissions on Part A (Overview and Context) and Part B (Overall Direction, Values and Uses, Science and Economics, Objectives, Limits and Targets).
- 2.13 In my evidence I address:

¹ Independent Hearings Panel Minute regarding Hearing Schedule dated December 2018.

- The collaborative approach used for PC1 and its implications for submissions;
- An overview of PC1 and what it should seek to achieve;
- Consistency between management of point and diffuse sources of nitrogen, phosphorus, sediment and microbial pathogens;
- Incentivising alternative approaches; and
- The PC1 Objectives.

3. COLLABORATIVE APPROACH

3.1 The Section 42 report (**s42A report**) on submissions relating to this hearing² observes in Section 2 (Summary of PC1) that “Plan Change 1 was developed by a Collaborative Stakeholder Group” and that one “aim of the collaborative approach to plan development was to enable those affected by PC1 to be part of developing the solution” (Section 4, Collaborative development process). I note that the “collaborative process” did not achieve a consensus outcome and that it had limited representation for those parties having primarily point source discharges.

3.2 Participation in the Collaborative Stakeholder Group was by invitation from the Regional Council only. It did not include OjiFS despite it being the largest non-farming and non-energy industrial operator in the region and its potential role in identifying alternative means for nutrient reduction (such as through afforestation). As a result, no other participant was able to fully articulate OjiFS’s experience and expectations. Ultimately and unsurprisingly therefore, critical aspects of the recommendations to the Council were agreed only by majority and do not necessarily fully represent the views of stakeholders in the region.

² Section 42A Report, Proposed Waikato Regional Plan Change 1 – Waikato and Waipā River Catchments, Part A: Overview and Context, Part B: Overall Direction, Values and Uses, Science and Economics, Objectives, Limits and Targets; Waikato Regional Council Policy Series 2019/04; 21 December 2018.

3.3 Section 2 of the s42A report³ states “*Plan Change 1 affects all rural properties over 2ha, within the Waikato River and Waipā River catchments*”. While the provisions in PC1 clearly affect rural properties, PC1 is not limited to rural properties and equally has implications for point source discharges that are not “rural properties”. However, the Collaborative Stakeholder Group that voted on changes that became PC1 significantly under-represented point source discharge activities because of the perception that PC1 is only about effects arising from “rural properties”.

3.4 In my opinion, this approach has undermined PC1. It has resulted in a proposal to grand-parent existing land use practices and has failed to recognise that equitable, effects-based management of the region’s water quality requires all sectors to implement their respective best practice measures forthwith. It requires a regulatory regime that encourages rather than stifles the investigation and adoption of new methods of land management if the Vision and Strategy for improving water quality and a robust regional economy are to be achieved.

4. PLAN CHANGE 1 OVERVIEW

4.1 The s42A report provides little guidance as to how individual submissions have been analysed or what overall direction PC1 will take once the policies and other provisions of the change are dealt with. Dealing with the objectives only at this time creates somewhat of a policy vacuum in that it is difficult to assess the implications of the partial approach being taken in the s42A report when no policy recommendations are available.

4.2 That said, the OjiFS submission on PC1 makes several points relevant to an overview of PC1, including:

- a) PC1 does not require reductions in discharges of contaminants and fails to require all land and water users to adopt practicable

³ Paragraph 17.

measures or make a proportionate contribution to mitigating adverse effects on water quality;

- b) By removing development flexibility, PC1 acts to actively discourage land uses, such as forestry, and management practice changes that provide benefits to water quality;
- c) PC1 adopts a staged approach to the management of contaminant discharges that defers the adoption of practicable options which could be applied as an interim measure;
- d) The adoption of Nitrogen Reference Point ("**NRP**") rules in PC1 foreshadow a grandparented allocation of discharge rights that will result in clear disincentives to adopt best practicable management practices; and
- e) PC1 unfairly requires point sources to adopt the best practicable option, to apply offsets and to be assessed against the short term targets of the plan in a manner that could result in those consented activities bearing the future burden to improve water quality, while unsatisfactory land use management practices are allowed to continue. Such initiatives have been in place for decades with respect to point source discharges in my experience, while grandparenting will allow unsatisfactory land use management practices to continue.

4.3 By way of an overview, I consider that PC1 needs to clearly establish consistent "ground rules" for management of both point and diffuse sources of nitrogen, phosphorus, sediment and microbial pathogens that build upon what is already expected of consent holders under the Waikato Regional Policy Statement and Waikato Regional Plan. The fact that the collaborative process established by the Waikato Regional Council did not reach a particular conclusion about how to manage such sources should not determine whether PC1 can now incorporate changes to ensure that it more effectively provides a pathway to the restoration and protection of the Waikato and Waipā Rivers now sought.

4.4 In that regard, the alternative approach proposed in the OjiFS submissions provides an appropriate pathway that encourages best practice options, discourages reliance on poor or superseded land use management practices and provides consistency with how point source discharge consents are managed. Similarly, alternative approaches, such as the Natural Capital Approach proposed by Beef + Lamb New Zealand, if they specify or incentivise best practice options would in my opinion discourage reliance on historical land use management practices.

5. POINT SOURCE VS DIFFUSE SOURCES

5.1 Resource consent holders have long been expected to adopt best practice approaches when obtaining and implementing resource consents for water takes or discharges. In the Waikato Region, there are several imperatives ensuring consent holders continue to improve their discharges or water related activities on a regular basis, including:

- a) The Vision and Strategy for the Waikato River;
- b) The National Policy Statement for Freshwater Management 2014;
- c) The Waikato Regional Policy Statement;
- d) The Operative Waikato Regional Plan,
- e) Resource consent conditions generally; and
- f) Resource consent conditions providing for, amongst other things, reviews of conditions, including, “technology related” reviews.

5.2 The above provisions, plus those in PC1 mean that there is an emphasis in policy terms for meaningful improvements in water quality to be achieved through increasing restrictions on point source discharges during the term of a consent. This contrasts with the provisions of PC1 affecting diffuse discharges from farming activities which would only be introduced over a much longer period (and potentially up to 80 years)

meaning that the burden for improving water quality is likely to be borne predominantly by point source discharge consent holders.

- 5.3 I briefly discuss each of the policy provisions below with respect to how they influence resource consents for point source discharges.

The Vision and Strategy for the Waikato River

- 5.4 The Vision and Strategy for the Waikato River is deemed to be part of the Waikato Regional Policy Statement (“**RPS**”) under section 11(1) of the Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010. When considering an application for a resource consent and any submissions received, the consent authority must have regard to any relevant provisions of a Regional Policy Statement.⁴ The Vision and Strategy is therefore a relevant (and arguably the most important) matter that a consent authority must have regard to in considering an application for a resource consent.
- 5.5 As noted in the Background and Explanation to PC1, the “*Vision and Strategy states that the Waikato and Waipa Rivers are degraded and require, amongst other things, restoration and protection ... The restoration of water quality within the Waikato River so that it is safe for people to swim in and take food from over its entire length.*” The same principles apply to consideration of any resource consent application.
- 5.6 In its Puke Coal decision,⁵ the Environment Court was “*unanimous in our view that the adoption of the Vision and Strategy Statement ... has led to a stepwise change in the approach to consents affecting the catchment of the Waikato River*”⁶ and that “*this application must, to the extent relevant, protect and restore the river*”.⁷ The Court concluded that

⁴ Section 104(1)(b)(v) of the RMA.

⁵ *Puke Coal Ltd v Waikato Regional Council*, [2014] NZEnvC 223.

⁶ *Ibid*, paragraph 86.

⁷ *Ibid*, paragraph 91.

“...it is clear that the Settlement Act⁸ was intended, and did take effect, as a statutory provision overriding national policy documents”⁹

5.7 In considering the “extent relevant” of protection and restoration, the Court stated that “... *it is clear that it intends to go further than avoiding effects. We have concluded protection and restoration includes preservation from future and restoration from past damage. Restoration can only involve recreation of a past state. Thus, some element of betterment is intended*”.¹⁰

5.8 This “element of betterment” has become a hallmark of subsequent consent applications by proactive, responsible applicants and in all consent decisions. Whether proffered in the application or not, consent applicants are required to demonstrate that their proposal will result in protection, restoration and betterment in the Waikato River within the term of consent. This results in a significant obligation on consent applicants to identify and use best practice, ensure tangible improvements and ensure that their water related activities do not adversely affect the waterway involved.

The National Policy Statement for Freshwater Management 2014

5.9 Policies A1 and A2 in the National Policy Statement for Freshwater Management 2014 (“**NPSFM**”) require councils to establish freshwater quality limits for all freshwater in the region and to establish targets and methods to assist with the improvement of water quality in that freshwater.

5.10 Policy A3 requires regional councils to impose conditions on discharge permits to ensure the limits and targets specified in Policies A1 and A2 can be met and where permissible to make rules requiring the adoption of the best practicable option to prevent or minimise any actual or likely

⁸ The Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010.

⁹ *Puke Coal Ltd v Waikato Regional Council*, [2014] NZEnvC 223, paragraph 90.

¹⁰ *Ibid*, paragraph 92.

adverse effect on the environment of any discharge of a contaminant into fresh water.

5.11 Policy A4 and direction (under section 55 of the RMA) in the NPSFM requires regional councils to amend their regional plans with immediate effect to include the following policies:

1. *When considering any application for a discharge the consent authority must have regard to the following matters:*
 - a. *the extent to which the discharge would avoid contamination that will have an adverse effect on the life-supporting capacity of fresh water including on any ecosystem associated with fresh water; and*
 - b. *the extent to which it is feasible and dependable that any more than minor adverse effect on fresh water, and on any ecosystem associated with fresh water, resulting from the discharge would be avoided.*
2. *When considering any application for a discharge the consent authority must have regard to the following matters:*
 - a. *the extent to which the discharge would avoid contamination that will have an adverse effect on the health of people and communities as affected by their contact with fresh water; and*
 - b. *the extent to which it is feasible and dependable that any more than minor adverse effect on the health of people and communities as affected by their contact with fresh water resulting from the discharge would be avoided.*

5.12 These obligations, while similar to the intent of PC1, mean that resource consent applications for point source discharges (and reviews of conditions of existing consents) already face requirements for improving water quality that are not yet imposed on diffuse sources, although for reasons I explain below, I consider they should be.

The Waikato Regional Policy Statement

5.13 In addition to the requirements of the Vision and Strategy that must be considered, the RPS also includes a range of provisions requiring consent holders to meet a variety of expectations with respect to water quality. These include, for example, Section 2 of the RPS which states

“All consent holders are required, where practicable, to avoid the adverse effects of their activities, and to remedy or mitigate them if they have not been avoided”, indicating a preference for avoiding adverse effects rather than remedying or mitigating them.

- 5.14 To achieve the Vision for the Waikato River, the RPS identifies a number of strategies that would be followed, including in section 2.5.3:

Encourage and foster a ‘whole of river’ approach to the restoration and protection of the Waikato River, including the development, recognition and promotion of best practice methods for restoring and protecting the health and wellbeing of the Waikato River.

- 5.15 The RPS also includes expectations that consent holders contribute to the maintenance and enhancement of the values of freshwater, such as in Objective 3.14, Mauri and values of fresh water bodies:

Maintain or enhance the mauri and identified values of fresh water bodies including by:

- a) maintaining or enhancing the overall quality of freshwater within the region;*
- b) safeguarding ecosystem processes and indigenous species habitats;*
- c) safeguarding the outstanding values of identified outstanding freshwater bodies and the significant values of wetlands;*
- d) safeguarding and improving the life supporting capacity of freshwater bodies where they have been degraded as a result of human activities, with demonstrable progress made by 2030...*

- 5.16 In seeking to achieve this objective, the RPS promotes use of best practice measures that would typically be applied to consent applicants to ensure that their water related activities do not adversely affect the waterway involved and show demonstrable improvements in water quality.

The Operative Waikato Regional Plan

- 5.17 The Waikato Regional Plan includes several measures seeking a “*net improvement of water quality across the Region*”, such as Objective

3.1.2 and Policy 3.2.3 (1). Coupled with provisions such as Policy 3.2.3 (2) seeking to “*Enhance the quality of degraded water ... so that ... discharges to water will not further degrade water*”, there is a very strong imperative in the Operative Waikato Regional Plan for point source discharges to be improved during the term of resource consents granted for such activities.

Resource consent conditions generally

5.18 Resource consent conditions often require step-wise improvements in discharge quality over the course of a resource consent duration. By way of example, resource consent 961348¹¹ for the Kinleith Mill includes reporting requirements relating to:

- a) Reducing the effects of its operations on the Waituna Stream, the Kopakorahi Stream and the Waikato River including the Kopakorahi Arm (condition 22B(i));
- b) Reducing in the treated wastewater the nitrogen and phosphorus loads contributed by the Kinleith Complex, net of the loads in the intake water, by a cumulative amount of at least 30% of the estimated loads in 1998, in recognition of this being a desirable water quality goal for the Waikato River (condition 22B(ii)); and
- c) Reducing the colour load in the treated wastewater (condition 22B(iii)).

5.19 In addition to the above reporting requirements, and perhaps more importantly in terms of ongoing improvements and application of a best practice approach, condition 23 of resource consent 961348 requires, at set periods during the term of the consent, detailed consideration of and reporting on the options available to reduce the discharge of contaminants of environmental significance that could be achieved, including by use of alternative technologies and enhancements to the current plant. This must include comparing the technology and

¹¹ Authorising discharges from the Kinleith Mill to the Waikato River, held by Oji Fibre Solutions.

procedures in place, and the quantities of contaminants discharged, with that of both other mills of a similar age and product mix, as well as “state-of-the-art” mills. Reporting in terms of this condition must include the reduction of contaminants that could be achieved, the cost implications, the technical feasibility, the age and condition of the relevant existing plant, and the environmental implications.

- 5.20 The report under condition 23 of resource consent 961348 must also include a “*summary of the projects to be undertaken to reduce the discharge of contaminants, a timetable for implementation, and the reductions to be achieved*”.¹² Irrespective of any review condition requirement, the expectation is that improvements will be implemented on an ongoing basis to improve discharges from the mill at regular intervals.
- 5.21 Clearly such conditions anticipate detailed assessment of the alternative technologies and practices available for managing wastewater and for improvements to be made throughout the duration of a resource consent, not just in response to seeking a new consent or a consent authority initiating a review of consent conditions.
- 5.22 While not strictly a “condition of consent”, consent duration is also used by consent authorities in order to encourage ongoing discharge improvements. Section 123 of the RMA provides for a maximum duration of 35 years for resource consents other than land use consents. The duration of resource consents granted by the Waikato Regional Council for discharges to surface water is typically significantly less than 35 years, and in many cases may not exceed 10 – 20 years.¹³

Resource consent conditions providing for reviews of conditions

- 5.23 Resource consents granted by the Waikato Regional Council typically include review conditions providing for the conditions of consent to be reviewed at regular intervals. Such review conditions are often linked to

¹² Condition 23(iii).

¹³ Resource consent 961348 expires on 1 January 2023, an effective duration of about 23 years from when it was granted.

the duration of a consent, with more review opportunities being provided for longer duration consents, and to implementing new technology progressively rather than only at re consenting.

5.24 By way of example, resource consent 961348 for the Kinleith Mill includes provision for reviews at seven yearly intervals “*requiring the adoption of the best practicable option to remove or reduce any adverse effects on the environment*”,¹⁴ to ensure “*that the conditions of this consent are effective in avoiding and mitigating adverse effects*”¹⁵ or to ensure “*that the effects on the Waituna Stream, the Kopakorahi Stream and the Waikato River including the Kopakorahi Arm are reduced*”.¹⁶

5.25 Resource consent 961348 also includes conditions¹⁷ providing for reviews following completion of various reports for the purposes of “*Amending, deleting, or inserting discharge limits or monitoring requirements relevant to matters covered in the initiating report*”,¹⁸ “*Adding to, deleting, or amending the conditions, to avoid, remedy or mitigate any adverse effects*”.¹⁹

5.26 These review conditions also provide for technology related reviews, such as Condition 28B(ii):

Requiring the consent holder to adopt the best practicable option to remove or reduce the adverse effects on the environment, and particularly the effects on the Waituna Stream, the Kopakorahi Stream and the Waikato River including the Kopakorahi Arm ...

¹⁴ Condition 27(i).

¹⁵ Condition 27(ii).

¹⁶ Condition 27(iii).

¹⁷ Conditions 28A and 28B.

¹⁸ Conditions 28A(ii), referring to reports discussing “the trends and other relevant characteristics of the monitoring data, and the environmental implications of these trends and characteristics” for specific monitoring requirements and 28B(i), referring to reports discussing “the trends over time and other relevant characteristics of all the monitoring data collected, and the environmental implications of these trends and characteristics” relating to more general monitoring requirements specified in the conditions.

¹⁹ Condition 28A(ii).

- (a) *...of contaminants discharged in the waste water; including nitrogen and phosphorus, colour, and trace pulp mill organics*;²⁰
or
- (b) *...by removing the aerators from the Kopakorahi Arm*;²¹ or
- (c) *...of the discharge of contaminates from the treatment pond desludging operations*.²²

Conclusion

- 5.27 As I have described above, there are significant drivers and imperatives in the present policy (Vision and Strategy, RPS and Regional Plan) and regulatory instruments (resource consents) seeking continuous, ongoing improvements and enhancements as well the as the adoption of best practice measures at regular intervals for point source activities.
- 5.28 Paragraph 11 in the s42A report states that “... *the biggest risk to water quality today is from non-point source discharges to land, or contaminants from a wide area*” while paragraph 22 states that the provisions in PC1 “*seek to manage land use activities to protect water quality, particularly from diffuse discharges*”. I agree that this emphasis is appropriate.
- 5.29 Paragraph 17 in the s42A report states that “*The new rules will complement the existing rules in the Waikato Regional Plan (WRP) and those existing rules will continue to apply*” while paragraph 23 observes that “*PC1 does not seek to include any new rules in relation to urban or point source discharges, as these are already managed by the operative WRP*”.
- 5.30 In my opinion, it is appropriate then that the provisions, expectations, drivers and imperatives already applicable to point source activities are equally applicable to the activities addressed under PC1 and should be

²⁰ Condition 28B(ii)(a).

²¹ Condition 28B(ii)(b).

²² Condition 28B(ii)(c).

applied consistently. The suggestion that it may be too hard to implement new measures or that there should be some protection for the way that things have always been done with new directives only applying to changes or intensification in land use is, in my opinion, erroneous and inconsistent with the need to progressively implement the improvement and restoration of water quality required by the Vision and Strategy and NPSFM.

- 5.31 In particular, PC1 should seek to specify or incentivise implementation of best practice land use techniques on an ongoing basis to ensure that the restoration and protection of the Waikato and Waipā Rivers is achieved in the timeframe required.

6. INCENTIVISING ALTERNATIVE APPROACHES

- 6.1 PC1 requires establishment of a NRP for any property with a cumulative area of 20 hectares or more based on the highest annual nitrogen leaching loss that occurred during a single year within the two financial years 2014/15 and 2015/16. While I understand that use and calculation of the NRP will be subject to subsequent PC1 hearings, it is appropriate to record during consideration of a PC1 overview that, in my opinion, there are shortfalls with this approach.
- 6.2 For the majority of farming activities, the NRP approach effectively “grandparents” existing land use behaviour in terms of the land use leading to diffuse discharges of nitrogen and does not take account of situations where nitrogen loss has already been significantly reduced or where poor practice has led to greater losses than should be readily achievable. For example, a land owner who converted to forestry before 2014 is effectively locked into continuing with that land use irrespective of any other consideration. Most landowners who have deliberately or inadvertently not exercised good practice techniques or whose land use is associated with higher rates of diffuse nitrogen discharges are free to continue to do so.

- 6.3 This approach means that there are no incentives to explore options such as afforestation of land (because landowners will likely be locked into that option) or to reduce nitrogen losses by improving land management activities beyond those associated with maintaining the nitrogen losses at retrospectively prescribed levels. The bottom line regulatory requirement proposed for the majority of farming activities is that the NRP cannot be exceeded, with enforcement only being possible in the context of those regulatory requirements and not for voluntary commitments to good farming practice.
- 6.4 I support adoption of approaches specifying or incentivising best practice options where activities potentially affecting ground and surface water are required to implement measures consistent with best practice, and to continue to do so on an ongoing basis. As I have described above, this is the approach already required by consent holders for point source discharges and in my opinion, the same should apply to diffuse / non-point source discharges.
- 6.5 I consider that adoption of a medium-term water quality target, as I discuss later in my evidence, will assist in demonstrating that long term effort will be required in order to achieve the restoration and protection targets specified in PC1. They will assist in setting the regulatory direction for improvement requirements under PC1 beyond the normal 10-year lifespan of a regional plan, as signalled by the Collaborative Stakeholder Group in determining that the Vision and Strategy be achieved over an 80 year period.
- 6.6 The OjiFS submission sets out in some detail an alternative approach to that set out in PC1. As I have indicated above, the “collaborative approach” adopted by the Council for PC1 gave limited opportunity for such alternatives to be considered prior to notification. The s42A report suggests to me that officers are now hesitant to recommend changes arising outside of the “collaborative approach” (for example, see paragraph 178). In my opinion, alternative approaches, including that proposed by OjiFS, need to be considered and implemented in order to provide a more consistent and therefore less investment-distorting

approach to managing diffuse and point source contributions of nitrogen, phosphorus, sediment and microbial pathogens that will achieve the restoration and protection of the Waikato and Waipā Rivers sought by PC1 and the Vision and Strategy.

7. OBJECTIVES

- 7.1 As I have outlined above, I consider that PC1 must ensure that a consistent regulatory and policy framework is applied across all point source and land use activities affecting water quality. In my opinion, there should be no room for reliance on unsustainable land use management practices when seeking to achieve water quality improvements across the catchment, notwithstanding that those practices are still employed by some land managers. In that regard, the alternative approach set out in the OjiFS submission provides such a consistent approach, as would a Natural Capital Approach. The objectives in PC1 should therefore support such approaches.
- 7.2 The s42A report recommends adjustment of Objective 1 to indicate that the 2096 target date is the latest time by which the required improvement should be achieved. I consider that an interim aspirational target should also be set to demonstrate that actions must be taken progressively over the 80-year period to 2096. This would provide appropriate support for a continuous improvement approach to reaching the overall water quality target rather than relying on a step change based on an assumption of improved practice relative to grandparented discharges at some time before the end of the overall timeframe.
- 7.3 The OjiFS submission proposes a medium term goal of 30% achievement over a thirty year period.²³ I cannot comment on the technical rationale for this 30% figure, but it seems to be realistic given the long term target, the magnitude of the problem and the need for demonstrable improvement now. I therefore consider that Objective 1

²³ Oji FS submission PC1 -6322

should be reworded as follows (incorporating the s42A report wording as appropriate):

By 2096 at the latest, a reduction in the discharges of nitrogen, phosphorus, sediment and microbial pathogens to land and water results in achievement of the restoration and protection of the Waikato and Waipā Rivers, such that the 80-year water quality attribute states in Table 3.11-1 are met. By 2066 discharges of nitrogen, phosphorus, sediment and microbial pathogens to land and water result in achievement of at least 30 percent of the of the 80 year water quality attribute states in Table 3-11.1.

7.4 As I discussed earlier, including a medium term goal assists with achieving the Vision and Strategy by establishing the requirement for ongoing improvement in land use practices and water quality beyond the normal ten-year lifespan of a regional plan.

7.5 The s42A report recommends an adjustment to Objective 3 to clarify that “discharges” in the context of the objective includes both diffuse and point source discharges.²⁴ While I support a change to make it clear that the objective relates to diffuse sources, I also consider that the objective should be amended to delete reference to either diffuse or point sources. As I have stated earlier in my evidence, point source discharges are already comprehensively controlled through the existing policy framework. The objective should be worded to require actions to be implemented any time to achieve the relevant targets as follows (using the s42A report version):

Actions put in place and implemented by 2026 to reduce diffuse and point source discharges of nitrogen, phosphorus, sediment and microbial pathogens, ~~are sufficient levels in order~~ to achieve:

a. The short-term (2026) water quality attribute states in Table 3.11-1.

²⁴ Oji FS submission PC1-6370

b. The medium-term (2066) target water quality attribute states required by Objective 1; and

c. The long-term (2096) water quality attribute states in Table 3-11.1.

7.6 The PC1 objectives should drive the use of best practice options to manage diffuse sources of nitrogen, phosphorus, sediment and microbial pathogens (consistent with the alternative approach set out in the OjiFS submission or with a Natural Capital Approach), while also recognising the contribution that activities potentially affecting water quality make to providing for social, economic and cultural wellbeing. I consider that a new objective, supporting the alternative approach proposed by OjiFS but taking account of the purpose of PC1 and the need for restoration and protection of the Waikato and Waipā Rivers is required as follows:²⁵

Activities affecting groundwater and surface water quality are managed in a manner that:

a. Safeguards the life supporting capacity of water and recognises and provides for the restoration and protection of the Waikato and Waipā Rivers through achievement of the 80 year water quality attribute states in Table 3-11.1, through the adoption of best practice options;

b. Recognises that activities potentially affecting groundwater and surface water quality contribute to social and economic wellbeing; and

c. Recognises that new activities may be appropriate where they increase the net efficiency of resource use and contribute to social and economic wellbeing.

7.7 The s42A report recommends deletion of the “explanation and reasons” for the objectives in PC1, primarily because of a potential disconnect

²⁵ Oji FS submission PC1 6366 / 6322 (refer to original submission for relief requesting a new objective)

between an objective and the reasons. I agree in that in my opinion, an objective should stand on its own and be able to be interpreted in the context of the plan without reference to particular reasons for adopting that objective.²⁶ The reason for adopting an objective is a Section 32 matter and should not extend the meaning of the objective itself. Accordingly, in my opinion they should be deleted as recommended in the s42A report.

7.8 I have summarised the changes that I propose in Appendix 1.

8. CONCLUSIONS

8.1 The collaborative process adopted by the Waikato Regional Council for PC1 was not appropriately representative of key stakeholders in the Waikato Region. Whether or not as a result, alternative ways of addressing the issues facing management of water quality in the Waikato and Waipā Rivers were not fully canvassed.

8.2 PC1 needs to clearly establish consistent ground rules for management of diffuse sources of nitrogen, phosphorus, sediment and microbial pathogens that build upon what is already expected of consent holders under the Waikato Regional Policy Statement and Waikato Regional Plan. These provisions should not duplicate or re-interpret what is already required in relation to point source discharges.

8.3 There are several provisions, expectations, drivers and imperatives already applicable to point source activities that in my opinion should apply equally to the activities addressed under PC1, such as implementing best practice land use techniques on an ongoing basis.

8.4 The Nitrogen Reference Point approach used in PC1 effectively “grandparents” existing land use behaviours that are more than likely unsustainable in terms of the use of nitrogen. The NRP acts as a disincentive to seeking and implementing alternative land use practices and uses that may be more sustainable given the particular geophysical

²⁶ Oji FS submission PC1 6392

constraints and productive use made of a land holding. It rewards the recalcitrant, penalises the proactive and means that meaningful progress towards restoring and protecting the Waikato and Waipā Rivers will be impeded rather than facilitated by regulation.

- 8.5 The alternative approaches as set out in the OjiFS submission or described as a Natural Capital Approach are most likely to provide what I consider to be an effective pathway to ensuring that the restoration and protection of the Waikato and Waipā Rivers is achieved in the timeframe prescribed.

APPENDIX ONE: SPECIFIC CHANGES SOUGHT

Objective 1

Objective 1 should be reworded as follows (incorporating the s42A report wording as appropriate):

By 2096 at the latest, a reduction in the discharges of nitrogen, phosphorus, sediment and microbial pathogens to land and water results in achievement of the restoration and protection of the Waikato and Waipā Rivers, such that the 80-year water quality attribute states in Table 3.11-1 are met. By 2066 discharges of nitrogen, phosphorus, sediment and microbial pathogens to land and water result in achievement of at least 30 percent of the of the 80 year water quality attribute states in Table 3-11.1.

Objective 3

Objective 3 should be worded to require actions to be implemented any time to achieve the relevant targets as follows (using the s42A report version):

Actions put in place and implemented by 2026 to reduce diffuse and point source discharges of nitrogen, phosphorus, sediment and microbial pathogens, are sufficient levels in order to achieve:

a. The short-term (2026) water quality attribute states in Table 3.11-1.

b. The medium-term (2066) target water quality attribute states required by Objective 1; and

c. The long-term (2096) water quality attribute states in Table 3-11.1.

New Objective

A new objective, supporting the alternative approach proposed by OjiFS but taking account of the purpose of PC1 and the need for restoration and protection of the Waikato and Waipā Rivers worded as follows:

Activities affecting groundwater and surface water quality are managed in a manner that:

- a. Safeguards the life supporting capacity of water and recognises and provides for the restoration and protection of the Waikato and Waipā Rivers through achievement of the 80 year water quality attribute states in Table 3-11.1, through the adoption of best practice options;
- b. Recognises that activities potentially affecting groundwater and surface water quality contribute to social and economic wellbeing; and
- c. Recognises that new activities may be appropriate where they increase the net efficiency of resource use and contribute to social and economic wellbeing.

Explanation and Reasons

Delete the “explanation and reasons” in PC1:

~~Principal Reasons for Adopting Objectives 1-6/Ngā Take Matua me Whai ngā Whāinga 1 ki te 6~~

~~Reasons for adopting Objective 1~~

~~Objective 1 sets long term limits^Δ for water quality consistent with the Vision and Strategy. Objective 1 sets aspirational 80-year water quality targets^Δ, which result in improvements in water quality from the current state monitored in 2010-2014. The water quality attributes^Δ listed in Table 3.11-1 that will be achieved by 2096 will be used to characterise the water quality of the different FMUs when the effectiveness of the objective is assessed. Objective 1 sets the overall context for what is to be achieved in terms of water quality improvements. There is not any hierarchy of Objectives 1 to 6.~~

~~Reasons for adopting Objective 2~~

~~Objective 2 sets the long term outcome for people and communities, recognising that restoration and protection of water quality will continue to support communities and the economy. The full achievement of the Table 11-1 2096 water quality attribute targets may require a potentially significant departure from how businesses and communities currently function, and it is important to minimise social disruption during this transition.~~

~~Reasons for adopting Objective 3~~

~~Objective 3 sets short term goals for a 10-year period, to show the first step toward full achievement of water quality consistent with the Vision and Strategy.~~

~~The effort required to make the first step may not be fully reflected in water quality improvements that are measureable in the water in 10 years. For this reason, the achievement of the objective will rely on measurement and monitoring of actions taken on the land to reduce pressures on water quality.~~

~~Point source discharges are currently managed through existing resource consents, and further action required to improve the quality of these discharges will occur on a case-by-case basis at the time of consent renewal, guided by the targets and limits set in Objective 1.~~

~~Reasons for adopting Objective 4~~

~~Objective 4 provides for a staged approach to long term achievement of the Vision and Strategy. It acknowledges that in order to maintain the social, cultural and economic wellbeing of communities during the 80-year journey, the first stage (the short term 10-year period) must ensure that overall costs to people can be sustained.~~

~~In the future, a property-level allocation of contaminant discharges may be required. Chapter 3.11 sets out the framework for collecting the required information so that the most appropriate approach can be identified. Land use type or intensity at July 2016 will not be the basis for any future allocation of property-level contaminant discharges. Therefore, consideration is needed of how to manage impacts in the transition.~~

~~Objective 4 seeks to minimise social disruption in the short term, while encouraging preparation for possible future requirements.~~

~~Reasons for adopting Objective 5~~

~~Objective 5 seeks to ensure that this Plan recognises and provides for the relationship of tangata whenua with ancestral lands, by ensuring the other provisions of Chapter 3.11 do not provide a further impediment to tangata whenua making optimal use of their land. Historic impediments included customary tenure in the nineteenth century, public works, rating law, Te Ture Whenua Māori Act, and confiscation. Some impediments or their effects continue currently, including issues of governance, fragmentation and compliance with central and local government regulations such as regional and district plans, or the emissions trading scheme. Land relevant to this objective is land returned through Treaty of Waitangi settlement, and land under Māori title that has multiple owners.~~

~~Reasons for adopting Objective 6~~

~~Objective 6 seeks to recognise the significant value of Whangamarino Wetland, a Ramsar site of international importance, and the complexity of this wetland system. It seeks to recognise that the bog ecosystems (which are particularly sensitive to discharges of contaminants) need protection over time. The effort required to restore Whangamarino Wetland over 80 years is considerable and as a minimum needs to halt and begin to reverse the decline in water quality in the first 10 years. This objective describes how wetland restoration needs to be supported by restoration of the Lower Waikato Freshwater Management Unit sub-catchments that flow into Whangamarino Wetland.~~