

**BEFORE THE INDEPENDENT COMMISSIONERS APPOINTED BY WAIKATO
REGIONAL COUNCIL**

In the matter of the Resource Management Act 1991

And a submission and further submission on Proposed Waikato
Regional Plan Change 1 – Waikato and Waipā River
Catchments (PPC1)

Submitter's Name: Hamilton City Council

Submission Number: 74051

Hearing Topic: **BLOCK 1**
Part B – Outcomes:
Overall direction and whole plan submissions
Values and uses
Objectives

**LEGAL SUBMISSIONS
ON BEHALF OF HAMILTON CITY COUNCIL – BLOCK 1**

Dated 8 March 2019

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MAY IT PLEASE THE HEARING PANEL

Scope of submissions

1. These submissions are made on behalf of Hamilton City Council (“HCC”). HCC made a submission and further submission on Proposed Plan Change 1 (“PPC1”).¹ In accordance with the format of the hearing schedule, these submissions only address those aspects of the HCC submission relating to the Block 1 topics. In that regard, detailed submissions regarding the relief sought to amend policies in PPC1 and introduce new policies will be given as part of the Block 2 hearing process. That will necessarily include a substantive analysis pursuant to section 32 of the Resource Management Act 1991 (“RMA”).²
2. For the purposes of Block 1 of the PPC1 hearings, on behalf of HCC, Mr Paul Ryan has prepared and lodged three statements of evidence in chief and three statements of rebuttal evidence. Mr Ryan’s evidence focuses on the critical issues for HCC in response to the section 42A report which, in summary, include:
 - (a) The relevance of the National Policy Statement on Urban Development Capacity (in the context of the “Background and explanation” section of PPC1);
 - (b) Clarification of the meaning and interpretation of the provisions HCC submitted within the Block 1, particularly the timing of which municipal and industrial point source dischargers will be required to revise those discharges;
 - (c) The need to distinguish between “natural” wetlands and constructed wetlands in the Values and Uses section of PPC1;

¹ Submission number 74051.

² Which will rely on evidence yet to be lodged, in accordance with the Hearing Panel directions for Block 2.

- (d) Various amendments to improve the clarity and certainty of provisions;
 - (e) The need to ensure that Objective 3 incorporates the critical aspects of the “Reasons for” the Objective in light of the proposal to delete the “Reasons for” parts of all objectives; and
 - (f) Retaining and/or enhancing those provisions which provide the necessary flexibility for HCC, through its consented activities, to achieve the PPC1 objectives – in particular, the staged approach, the use of Best Practicable Option and offset mitigation.
3. Against this background, these submissions:
- (a) Briefly set out the background to HCC’s position on PPC1 and its original submission;
 - (b) Set out HCC’s position in relation to the Hearing Panel’s minute of 27 February 2019 regarding expert caucusing on Table 3.11-1;
 - (c) Very briefly address the amendments supported by and/or proposed by Mr Ryan in his evidence, including the potential question of scope regarding the relief sought in relation to wetlands; and
 - (d) Reserves HCC’s position on Block 1 matters until such time as the complete s42A officer report is available and relevant expert caucusing has concluded.

Introduction

4. The HCC original submission sets out its position on PPC1. HCC has not challenged the overall framework of PPC1 or the process of its development. Indeed, HCC acknowledges that it will need to make significant funding provision for the necessary upgrades to its three-waters infrastructure, including its wastewater treatment plant. The

submission is narrowly focussed on matters essentially relating to municipal point source discharges, (except for the amendment sought to Schedule C to exclude animals at Hamilton Zoo from its application).

5. In accordance with its role and functions as a territorial authority, HCC undertakes a range of municipal activities relating to “three-waters”. This includes water treatment processes, wastewater treatment discharges, wastewater conveyance, closed landfills, leachate discharges and stormwater discharges. HCC holds a suite of resource consents from WRC authorising point source discharges resulting from these activities. It is critical that HCC is enabled to continue to perform its functions to provide “three-waters” services to the City, which necessarily includes renewal of the relevant resource consents it currently holds.
6. Accordingly, the staged approach to the achievement of the Vision & Strategy as provided for in PPC1 is critical for HCC to enable it to achieve the outcomes sought through the implementation of PPC1. The “policy settings” for municipal discharges set out in PPC1 are the focus of its relief sought as reflected in HCC’s submission (and to the extent that is relevant, its evidence in relation to Block 1).
7. Counsel notes that other submitters have raised concerns about, or have challenged, whether PPC1 appropriately gives effect to the NPS-FW (including as amended in 2017). HCC has not submitted directly on this point, neither has it filed evidence on the same in the context of the Block 1 hearings. However, it is acknowledged that this is a key issue to be resolved by the Hearing Panel and is relevant in the context of its Minute regarding expert conferencing on Table 3.11-1 (which is discussed further below).
8. Related to this question is the relationship between the NPS-FW, the Vision & Strategy and the NPS-UDC. As stated in its submission and referred to in rebuttal evidence on Block 1 (in relation to the “Background and explanation” section of PPC1), HCC is concerned that PPC1 does not

give effect to the NPS-UDC. However, the evidence in support of its position pursuant to section 32 of the RMA will be lodged in the context of the Block 2 topics. That is because the relevant amendments sought to the provisions of PPC1 and/or proposed new provisions fall within the topics of Block 2 (i.e., policies and other methods).

9. For the purposes of the Block 1 topics, the amendments being proposed by HCC and supported by Mr Ryan in his evidence seek to reconcile the relevant higher order documents. In that regard, the amendments to the “Background and explanation” section of PPC1 regarding the NPS-UDC do not require an evaluation under section 32, in the absence of the submission points on the proposed policy wording being heard at this stage.

Table 3.11-1

10. HCC made a submission seeking to amend Table 3.11-1 to ensure that short term and 80-year targets for Annual Median Ammonia and Annual Maximum Ammonia are meaningful and within the detection limits for current standard analytical methods. However, it did not propose specific alternative numerics, nor did it otherwise submit on or against the content of Table 3.11-1.
11. HCC supports the proposal for expert caucusing to ensure that the Hearing Panel is provided with reliable and sound evidence in order to determine which is the most appropriate to achieve the Objectives of PPC1 and the higher order documents, and to achieve the purpose of the RMA. HCC is working in collaboration with the WARTA Group and will rely on the expertise and evidence of Mr Antony Kirk for the purposes of the expert caucusing and the hearing process with respect to the content/numerics in Table 3.11-1.

Evidence of Mr Ryan

Overall direction and whole plan submissions

12. Mr Ryan's evidence on the "Overall direction and whole plan submissions" reiterates HCC's submission point seeking amendments to clarify the meaning and interpretation of PPC1 to apply the water quality limits and targets in Table 3.11-1 to municipal or industrial point source discharges when existing resource consent terms are due to expire. In my submission, as explained by Mr Ryan, these amendments are necessary to ensure that the intention of PPC1 is accurately reflected in its drafting and are the most appropriate to achieve the Objectives of PPC1.
13. Mr Ryan's rebuttal evidence on the same topic raises concern over the lack of reference to the NPS-UDC in the evidence in chief of Ms May (for WRC). There is no question that a regional plan must give effect to a National Policy Statement.³ The omission of any reference to the NPS-UDC in the evidence of Ms May on the statutory framework for PPC1 is a concern. However, as set out by Mr Ryan, this can be addressed by reference to the NPS-UDC in the "Background and explanation" section. Again, this is helpful in providing clarity and certainty of implementation of the provisions of PPC1 and sets the context for the Block 2 topics.

Outcomes, Values and uses

14. The evidence of Mr Ryan on this topic is self-explanatory. Again, Mr Ryan seeks amendments which will provide better certainty regarding interpretation and implementation of the PPC1 provisions, particularly insofar as they apply to municipal discharges.

³ Sections 62(3) and 67(3)(a) RMA.

References to “wetlands”

15. As set out in Mr Ryan’s evidence, HCC did not submit on Variation 1 to PPC1. However, HCC’s primary submission did include submission points on the Values and Uses for the Waikato and Waipa Rivers (from page 9 of its submission). It raised the point that these “Values and Uses” will be relevant in the implementation of PPC1 on the basis that these are referred to in methods and Objective 4.
16. Variation 1 subsequently introduced reference to “wetlands” in the values and uses. While HCC did not submit on Variation 1, in my submission clause 16B(1) of Schedule 1 to the RMA applies whereby Variation 1 included provisions (i.e., amendments in introduce reference to wetlands), to be substituted for a provision in PPC1 (i.e., the version of the values and uses as notified in PPC1). It follows that, as a submitter on the provisions of PPC1 which were later substituted by Variation 1, HCC has scope to seek the amendments detailed in Mr Ryan’s evidence and the Hearing Panel has jurisdiction to grant that relief.
17. In the alternative, in my submission, given the context and reasons for HCC’s submission, the amendments sought by Mr Ryan can be characterised as being raised by and within the ambit of what is reasonably and fairly raised in submissions on the plan change.⁴ Furthermore, those potentially affected by the proposed amendments have opportunity for participation (i.e., through the hearing process) and by considering the relief sought no party will be denied an effective opportunity to participate in the plan change process.⁵ Indeed, by not allowing the relief to be considered will deny HCC opportunity to fairly participate. For these reasons, it is submitted that HCC has scope to seek the additional relief relating to clarifying that the term wetland means “natural” wetland.

⁴ *Environmental Defence Society Incorporated & Ors v Otorohanga District Council* [2014] NZEnvC 70, citing *Countdown Properties (Northlands) Ltd v Dunedin City Council* [1994] NZRMA 145.

⁵ *Ibid*, paragraph [18], citing *Clearwater Resort Limited v Christchurch City Council* (unreported: High Court, Christchurch, AP34/02, 14 March 2003, William Young J), at para [66].

Outcomes: Objectives

18. Mr Ryan sets out a detailed explanation of why it is appropriate for the critical elements of the “reasons for” Objective 3 to be incorporated into the substantive Objective, in light of the s42A officer’s recommendation to delete the “reasons for” across all Objectives of PPC1. Mr Ryan also provides rebuttal evidence on the position taken by Mr Scrafton for Watercare.⁶
19. In my submission, it is consistent with best practice for drafting provisions in a plan or proposed plan that each Objective is “stand alone” in the sense that the wording of the Objective is clear, concise and robust – without recourse to explanatory text or other “guideline”. It is the Objective which has legal effect and carries weight – explanatory text does not.
20. In the context of Objective 3 as notified, the “reasons for” the Objective include key matters which are material to the meaning and intent of the Objective. While Mr Ryan accepts the rationale for deleting the “reasons for”, those key elements should be included in the Objective itself. As explained by Mr Ryan, the amendments proposed in his evidence to incorporate those key “reasons for” into the text of Objective 3 better reflect the intent of PPC1 and chapter 3.11, particularly as it applies to municipal discharges and is therefore the most appropriate to achieve the purpose of the RMA.
21. It is acknowledged that the question of whether this Objective is the most appropriate to give effect to the purpose of the RMA is potentially an outstanding matter, in light of its reference to Table 3.11-1. Furthermore, as signalled at the outset, HCC’s evidence on Block 2 will set out the basis for its position on the NPS-UDC. This in turn has a relationship to Objective 3 and its implications for municipal discharges. Accordingly, the

⁶ However, it appears that Mr Scrafton has reflected on his evidence in chief and counsel understands that he intends to discuss the question of the wording of Objective 3 with Mr Ryan.

evaluation of the policies and relevant Objectives in PPC1 and whether it gives effect to the higher order documents and achieves the purpose of the RMA is not addressed by HCC in Block 1 as it intends to do so in Block 2.

Reserved position

22. Due to the significance of the matters to be addressed on Block 2 and the expert caucusing yet to take place on the content of Table 3.11-1, HCC reserves its position on the matters address in its submission and evidence on Block 1.



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