

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of **PROPOSED PLAN CHANGE 1** to the Waikato Regional Plan – hearing of **BLOCK 3** topics

AND

IN THE MATTER of the hearing of the submission by **WATERCARE SERVICES LIMITED** in relation to **BLOCK 3** topics

STATEMENT OF EVIDENCE OF CHRISTOPHER JAMES SCRAFTON

1. INTRODUCTION

Qualifications and experience

- 1.1 My name is Christopher James Scrafton. I am a Technical Director – Planning in the consultancy firm of Beca. I have over 18 years' experience in town planning.
- 1.2 I hold the qualifications of a Bachelor of Arts in Geography from the University of Hull (1999) and a Postgraduate Certificate and a Masters in Town Planning from the South Bank University, London (2002 and 2005 respectively). I am a full member of the New Zealand Planning Institute and I am an accredited Commissioner under the Ministry for the Environment and Local Government New Zealand "Making Good Decisions" 2006 Programme.
- 1.3 My experience of particular relevance to Plan Change 1 is set out in my primary statement of evidence for the Waikato Regional Plan Change 1 to the Waikato Regional Plan ("**PC1**") Block 1 Hearings.

Involvement in Proposed Plan Change 1

- 1.4 Beca was engaged by Watercare Services Limited ("**Watercare**") to provide planning services in relation to PC1 in 2018.

- 1.5 My involvement in PC1 has included the following:
- (a) Co-author of the Watercare submission on PC1;
 - (b) Lead planner in the development of Watercare's further submission on PC1; and
 - (c) Providing expert planning evidence on the Block 1 and Block 2 topics.
- 1.6 I have read the PC1 report, section 32 report, and all of the submissions I consider to be relevant to Watercare and the Council Officer's Block 3 section 42A report.

Purpose and scope of evidence

- 1.7 The purpose of this evidence is to provide planning evidence in support of Watercare's submission in relation to Block 3. My evidence is structured as follows:
- (a) Policy 17 (Section 3); and
 - (b) The definition of Wetland (Section 4).
- 1.8 A summary of my evidence is set out in Section 2 below.

Expert Witness Code of Conduct

- 1.9 I have read the Code of Conduct for Expert Witnesses, contained in the Environment Court Consolidated Practice Note (2014) and I agree to comply with it. I can confirm that the issues addressed in this statement are within my area of expertise and that in preparing my evidence I have not omitted to consider material facts known to me that might alter or detract from the opinions expressed.

2. SUMMARY OF EVIDENCE

- 2.1 Watercare is, in principle, supportive of PC1. However, there are several aspects of PC1 that Watercare is concerned about. I share those concerns and discuss these concerns in relation to Block 3 topics in more detail below. In summary, given the conclusions I have reached in preparing evidence for Blocks 1, 2 and 3, I consider that there are a number of significant shortcomings of PC1 that need to be rectified to be able to conclude that it adequately gives effect to the National Policy Statement:

Freshwater Management ("**NPS:FM**") or the Vision and Strategy for the Waikato River.

Policy 17

2.2 I have a number of concerns regarding the drafting and implications of Policy 17. These are:

- (a) Policy 17 appears to be an attempt to, to some degree, implement a number of the values of PC1 and to provide a "catch-all" policy response to the Vision and Strategy;
- (b) The policy is drafted in a manner that is likely to create significant uncertainty in the context of future resource consent processes; and
- (c) The introductory chapter of PC1 (page 11) notes that Chapter 3.11 prevails over other parts of the WRP in the event of any inconsistencies. I consider that that statement is also likely to result in uncertainty.

2.3 For these reasons, I recommend Policy 17 be deleted from PC1.

Definition of "wetland"

2.4 Watercare's submission on PC1 noted that the objectives, policies and implementation methods of PC1 could be applied to constructed and engineered wetlands associated with water and wastewater infrastructure. The authors of the section 42A report have not recommended the inclusion of a definition of the term "wetland" on the basis that the term is already defined in the RMA and that this definition is applied across the whole Waikato Region¹.

2.5 I have recommended the inclusion of a definition of the term "wetland", so that the definition will exclude wastewater treatment plant ("**WWTP**") infrastructure and thus avoid the PC1 provisions being incorrectly applied to artificial wetlands used for wastewater treatment.

3. POLICY 17

3.1 As stated in my Block 2 statement of evidence, I have concerns relating to the uncertainty of whether Policy 17 applies to point source discharges². These concerns partially relate to the inclusion of Policy 17 in the Block 3

¹ Paragraph 526 of the Section 42A Report – Block 3.

² Paragraph 10.1, Statement of Evidence of Christopher James Scrafton – Block 2.

hearings and that there is no specific reference in PC1 identifying whether it does or does not apply to point source discharge.

3.2 Notwithstanding the above, and assuming that Policy 17 is proposed to be relevant to a point source discharge from a WWTP, I have a number of concerns regarding the drafting and implications of Policy 17. In particular:

- (a) The lack of relationship or “cascade” between Policy 17 and the values and objectives of PC1;
- (b) The general (poor) drafting of Policy 17; and
- (c) Chapter 3.11 of the WRP prevailing over other parts of the WRP.

3.3 I discuss these concerns in more detail below.

Relationship of Policy 17 with the values and objectives of PC1

3.4 I have previously undertaken analysis of the relationship of the values, objectives and policies of PC1 to understand how the objectives implement the values and how the policies implement the objectives. This summary is appended to my Block 2 statement of evidence³. To summarise this analysis, I do not consider that there is a clear “cascade” between the values, objectives and policies that could be considered to be good planning practice. I consider that the conclusions set out in my Block 2 statement of evidence are equally relevant to Policy 17⁴.

3.5 In my view, Policy 17 appears to be an attempt to, to some degree, implement a number of the values of PC1 and to provide a “catch-all” policy response to the Vision and Strategy. I consider that this conclusion is supported by the inclusion of the term “but not limited to,” which emphasises that the list of “opportunities to enhance” is “not limited to,” and that there may be further “matters” in the values and objectives of the Vision and Strategy for the Waikato River which may require consideration. I have a number of concerns regarding this approach:

- (a) The NPS:FM requires the formulation of freshwater objectives to implement the values of PC1. As stated in previous statements of evidence⁵, in my view:
 - i. It is difficult to identify any direct relationship between the values of PC1 and the objectives of PC1; and

³ Pages 30 - 44, Statement of Evidence of Christopher James Scrafton – Block 2.

⁴ Paragraph 3.5, Statement of Evidence of Christopher James Scrafton – Block 2.

⁵ Paragraph 3.4, Statement of Evidence of Christopher James Scrafton – Block 2.

- ii. PC1 does not include any objectives that can be considered to be freshwater objectives.
- (b) As per section 67(1)(b) of the RMA, a regional plan must state policies to implement the objectives of a regional plan.
 - (c) Having regard to (a) and (b) above, the policies of PC1 should in my opinion be drafted in a manner that clearly implements freshwater objectives and Policy 17 should cascade from a freshwater objective which is formulated to implement a value. In my view, this is not the scenario proposed by PC1.
 - (d) For the reasons set out below, I do not consider Policy 17 to be an adequate approach to implementing the Vision and Strategy.

Drafting of Policy 17

3.6 In my view, Policy 17 is drafted in a manner that is likely to create significant uncertainty in the context of future resource consent processes. For example, Policy 17 requires applicants to “seek opportunities to advance matters in the Vision and Strategy and the values”. In my view, it is unclear:

- (a) What is meant by “seek opportunities to” or how an applicant can demonstrate having regard to this policy requirement.
- (b) What the “matters” in the Vision and Strategy are. I am unaware of any “matters” in the Vision and Strategy; rather, there is a vision, objectives and strategies.
- (c) What constitutes a “matter” in terms of the values.
- (d) What “outside of the scope of Chapter 3.11” means. This issue is compounded by Chapter 3.11 prevailing over other parts of the WRP where there are inconsistencies.
- (e) What is meant by “secondary benefits.” I note in this regard that the authors of the section 42A report consider that “secondary benefits” should be deleted from Policy 17⁶.

3.7 Further, Policy 17 does not actually require an applicant to do anything more than “seek opportunities” which in my view does not provide sufficient certainty that such opportunities will be achieved.

⁶ Paragraph 538 of the Section 42A Report - Proposed Waikato Regional Plan Change 1 – Waikato and Waipā River Catchments – Block 3

Policy 17 and the Operative Waikato Regional Plan

- 3.8 As stated in my Block 2 statement of evidence⁷⁷, I consider that the statement in the introductory chapter of PC1 (page 11) which notes that, where there are any inconsistencies, Chapter 3.11 prevails over other parts of the WRP is likely to result in uncertainty.
- 3.9 In my view, this approach is particularly problematic with regard to Policy 17 as a result of the broad approach to the drafting of the policy. Policy 17:
- (a) Directs applicants to seek out opportunities to advance matters in the Vision and Strategy; that
 - (b) Fall outside of the scope of Chapter 3.11; but
 - (c) Which could be considered to be secondary benefits.
- 3.10 Given the uncertainties set out above at paragraph 3.6, in my view this is likely to lead to some debate as to what other parts of the WRP, Policy 17 is and is not inconsistent with.

Conclusion

- 3.11 Having regard to the above, in my opinion Policy 17 should be deleted and further consideration should be given to the content of the policies of PC1 once adequate freshwater objectives have been formulated to respond to the freshwater values of PC1.

4. DEFINITION OF "WETLAND"

- 4.1 Watercare's submission on PC1 expressed a concern that the objectives, policies and implementation methods of PC1 could be applied to constructed and engineered wetlands associated with water and wastewater infrastructure⁸. Watercare considers that such artificial wetlands should not be considered in the same manner as natural wetlands and that they are more appropriately identified as "infrastructure". As such, Watercare sought the inclusion of a definition of the term "wetland" in PC1 that specifically excludes constructed and engineered wetlands for the management and treatment of contaminant discharges.
- 4.2 The authors of the section 42A report have not recommended the inclusion of a definition of "wetland", on the basis that the term is already defined in the RMA and that this definition is applied across the entire Waikato

⁷⁷ Paragraph 3.4, Statement of Evidence of Christopher James Scafton – Block 2

⁸ Page 11 of the Original Submission of Watercare Services Limited on Variation 1 to PC1

Region⁹. The section 42A authors also note that the Waikato Regional Policy Statement includes its own definition of “wetland” which includes the definition from the RMA but goes further and includes wetlands in the Coastal Marine Area¹⁰.

- 4.3 Whilst I accept that it is generally good practice plan drafting to rely on a RMA definition where available, in my view it would be inappropriate for Watercare infrastructure to be considered the same as a natural wetland in the context of PC1. In this regard I note that “wastewater storage systems” and “water supply dams” are included in the definition of “regionally significant infrastructure I recommended through Block 1¹¹.
- 4.4 Having regard to the above and to avoid any uncertainty, I recommend the inclusion of the following definition of wetlands:

***Wetland** (in the Waikato River catchment excluding the part of that catchment that is in the Lake Taupo catchment) includes permanently or intermittently wet areas, shallow water, and land water margins that support a natural ecosystem of plants and animals that are adapted to wet conditions but does not include artificial wetlands that are used for infrastructure purposes.”*

- 4.5 For clarity, the above definition is largely consistent with the RMA definition, but:
- (a) Clearly excludes artificial wetlands used for infrastructure purposes to ensure that there can be no misinterpretation; and
 - (b) Is limited to the Waikato River catchment, excluding the part of that catchment that is in the Lake Taupo catchment as that part is not included in the area that PC1 applies to.

Chris Scrafton
5 July 2019

⁹ Paragraph 526 of the Section 42A Report – Block 3

¹⁰ Paragraph 526 of the Section 42A Report – Block 3

¹¹ Appendix A, Primary Statement of Evidence, Christopher James Scrafton, Block 1

Appendix A Mapping of PC1 Values, Objectives and Policies, Vision and Strategy Objectives against WRP Objectives and Policies

Value	Vision and Strategy for the Waikato River Objective	PC1 Objective	PC1 Policy 17	WRP Objective	WRP Policies
<p>The Waikato and Waipa catchments support resilient freshwater ecosystems and healthy freshwater populations of indigenous plants and animals.</p> <p>Lakes and rivers are a place to swim and undertake recreation activities in an environment that poses minimal risk to health.</p> <p>All communities can use the lakes and rivers to pilot their vehicles and waka and navigate to their destinations.</p>	<p>I. The protection and enhancement of significant sites, fisheries, flora and fauna.</p> <p>L. The promotion of improved access to the Waikato River to better enable sporting, recreational, and cultural opportunities.</p>	N/A	<p>When applying policies and methods in Chapter 3.11, seek opportunities to advance those matters in the Vision and Strategy and the values[^] for the Waikato and Waipā Rivers that fall outside the scope of Chapter 3.11, but could be considered secondary benefits of methods carried out under this Chapter⁷², including, but not limited to:</p> <ul style="list-style-type: none"> a. Opportunities to enhance biodiversity, wetland values[^] and the functioning of ecosystems; and b. Opportunities to enhance access and recreational values[^] associated with the rivers. 	<p>3.1.2 Objective The management of water bodies in a way which ensures:</p> <ul style="list-style-type: none"> a. that people are able to take and use water for their social, economic and cultural wellbeing b. net improvement¹ of water quality across the Region c. the avoidance of significant adverse effects on aquatic ecosystems d. the characteristics of flow regimes are enhanced where practicable and justified by the ecological benefits e. the range of uses of water reliant on the characteristics of flow regimes are maintained or enhanced f. the range of reasonably foreseeable uses of ground water and surface water are protected g. inefficient use of the available ground surface water resources is minimised h. an increase in the extent and quality of the Region's wetlands that significant adverse effects on the relationship tangata whenua as Kaitiaki have with water and their identified taonga such as waahi tapu, and native flora and fauna that have customary and traditional uses in or on the i. 	<p>3.5.3 Policy 2: Managing Discharges to Water with More than Minor Adverse Effects Control, through resource consents, discharges to water that are likely to have more than minor adverse effects so that:</p> <ul style="list-style-type: none"> a. adverse effects on surface water bodies that are inconsistent with the policies in Section 3.2.3 of this Plan are avoided as far as practicable and otherwise remedied or mitigated b. the discharge causes no significant adverse effects from flooding or erosion c. there are no significant adverse effects from downstream siltation d. there are no significant adverse effects on the Coastal Marine Area, wetlands² that are areas of significant indigenous vegetation and/or significant habitats of indigenous fauna, cave ecosystems or lakes a. any subsequent discharges to air do not have adverse effects that are inconsistent with the policies for air quality provided in Section 6.1.3 of this Plan.

				<p>margins of water bodies, are remedied or mitigated</p> <p>j. the cumulative adverse effects on the relationship tangata whenua as Kaitiaki have with water their identified taonga such as waahi tapu, and native flora and fauna that have customary and traditional uses that are in or on the margins of water bodies are remedied or mitigated</p> <p>k. the management of non-point source discharges of nutrients, faecal coliforms and sediment to levels that are consistent with the identified purpose and values for which the water body is being managed</p> <p>l. the natural character of the coastal environment, wetlands and lakes and rivers and their margins (including caves), is preserved and protected from inappropriate use and development</p> <p>m. ground water quality is maintained or enhanced and ground water takes managed to ensure sustainable yield</p> <p>n. shallow ground water takes do not adversely affect values for which any potentially affected surface water body is managed</p> <p>o. concentrations of contaminants leaching from land use activities and non-point source discharges to shallow ground water and surface waters do not reach levels that present significant risks to human health or aquatic ecosystems</p>	
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				<p>p. that the positive effects of water resource use activities and associated existing lawfully established infrastructure are recognised, whilst avoiding, remedying or mitigating adverse effects on the environment.</p>	
					<p>3.5.3 Policy 2: Managing Discharges to Water with More than Minor Adverse Effects Control, through resource consents, discharges to water that are likely to have more than minor adverse effects so that:</p> <ul style="list-style-type: none"> a. adverse effects on surface water bodies that are inconsistent with the policies in Section 3.2.3 of this Plan are avoided as far as practicable and otherwise remedied or mitigated b. the discharge causes no significant adverse effects from flooding or erosion c. there are no significant adverse effects from downstream siltation d. there are no significant adverse effects on the Coastal Marine Area, <u>wetlands</u> that are areas of significant indigenous vegetation and/or significant habitats of indigenous fauna, cave ecosystems or lakes e. any subsequent discharges to air do not have adverse effects that are inconsistent with the policies for air quality provided in Section 6.1.3 of this Plan.
					<p>3.7.3 Policy 1: Control Land Drainage in Areas Adjacent to Identified</p>

					<p>Wetlands and Within Wetlands</p> <p>Ensure that land drainage activities within <u>wetlands that are areas of significant indigenous vegetation and/or significant habitats of indigenous fauna</u>¹, or immediately adjacent to wetlands identified in Section 3.7.7, are undertaken in a manner that avoids changes in water level that lead to:</p> <ol style="list-style-type: none"> a. shrinking or loss of the wetland, or b. accelerated dewatering and oxidation, or c. significant adverse effects on tangata whenua values of the wetland, or d. adverse effects of flooding on neighbouring properties, or e. significant adverse effects on the relationship tangata whenua as Kaitiaki have with the wetland, or f. adverse effects on the natural character of wetlands or g. <u>adverse effects on the ability to use the wetlands for recreational purposes</u>
					<p>4.2.3 Policy 1: Enable Low Impact Structures</p> <p>Enable through permitted activity rules the use, erection, reconstruction, placement, alteration, extension, removal or demolition of structures, in, on, under or over the beds of rivers or lakes which:</p> <ol style="list-style-type: none"> a. do not significantly adversely affect bed stability b. do not significantly degrade water

					<p>quality, flow regimes and aquatic ecosystems, in a manner that is inconsistent with the policies in Section 3.2.3</p> <ul style="list-style-type: none"> c. do not obstruct fish passage for trout and indigenous fish d. do not adversely affect the natural character of river and lake beds (including caves) e. do not increase the adverse effects of flooding on neighbouring properties f. do not obstruct navigation where appropriate g. avoid significant adverse effects on the relationship tangata whenua as kaitiaki have with river and lake beds h. <u>do not obstruct existing legal public access where appropriate</u>
					<p>4.2.3 Policy 6: Positive Benefits of Resource Use</p> <p><u>Recognise the positive benefits that can arise from the use, development and protection of river and lake beds whilst ensuring that any adverse effects are controlled in accordance with Policy 2 of this Chapter.</u></p>