

**Before an Independent Hearings Panel**

**The Proposed Waikato Regional Plan Change 1**

**IN THE MATTER OF** the Resource Management Act 1991 (**RMA**)

**IN THE MATTER OF** the Proposed Waikato Regional Plan Change 1, Block 2 Hearings:  
**TOPIC – Parts C1-C6: Policies, Rules and Schedules (most)**

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**PRIMARY EVIDENCE OF ELIZABETH KIM HARDY  
ON BEHALF OF MIRAKA LIMITED**

**Planning**

**Dated: 3 May 2019**

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## **1. EXECUTIVE SUMMARY**

1.1 The Miraka Limited (Miraka) submission and further submission generally supports the provisions of Plan Change 1 (**PC1**) and Variation 1 (**V1**).

1.2 A number of changes are proposed in the Miraka submission to the plan objectives, policies and rules to enhance equity amongst landowners and require deliberate action to improve practice change.

1.3 In this statement I set out the proposed amendments to the plan polices and rules on the following matters:

(a) Farm Environment Plans and adoption of Good Farm Practice;

(b) Removal of the 75<sup>th</sup> percentile approach;

(c) The Nitrogen Reference Point and alternatives to using Overseer-based models to establish a baseline and track improvements in farm practice and contaminant loss;

(d) Prioritisation of catchments or sectors; and

(e) Permitted Activity Status of farming under a Certified Industry Schemes.

1.4 These amendments rely on the statements of Mr Grant Jackson, Dr Mark Shepherd and Dr Gavin Sheath, on the assumption that the commissioners accept the technical evidence contained within those statements.

1.5 A track changes copy of the amendments sought to the plan change provisions in response to the Miraka submission points addressed in this statement and its evidence for Block 2 is attached as Appendix 1.

## **2. INTRODUCTION**

2.1 My full name is Elizabeth Kim Hardy. I have over 25 years' experience in resource management planning. My qualifications and experience are set out in my Block 1 evidence.

2.2 My evidence is given in support of the submission made by Miraka to PC1 and V1.

2.3 I have read the Environment Court's Code of Conduct for Expert Witnesses, and I agree to comply with it. My qualifications as an expert are set out above and in my Block 1 evidence. I confirm that the issues addressed in this brief of evidence are

within my area of expertise. I have not omitted to consider material facts known to me that might alter or detract from the opinions expressed.

- 2.4 I was engaged by Miraka to provide planning evidence in respect of PC1 and V1 in January 2019. I have not participated in any stakeholder collaborative or expert conferencing process in respect of PC1 and V1.
- 2.5 I would be available for expert witness conferencing should that be requested by the panel.

### **3. SCOPE OF EVIDENCE**

- 3.1 This statement of evidence is focused on my planning interpretation of the technical positions put forward by Dr Sheath, Mr Jackson and Dr Shepherd and subsequent amendments necessary to the planning framework should Mr Shepherd and Mr Sheath's technical positions be accepted by the panel.
- 3.2 The specific provisions of the PC1 and V1 planning framework that I comment on in this Block 1 statement of evidence include:
- (a) Policy 1;
  - (b) Policy 3A;
  - (c) Policies 4 and 5;
  - (d) Rule 3.11.5.1A Interim Permitted Activity Rule;
  - (e) Rule 3.11.5.2A Controlled Activity; and
  - (f) Rule 3.11.5.3 Permitted Activity.
  - (g) Schedule B

### **4. MIRAKA STATEMENTS OF EVIDENCE**

- 4.1 In preparing this statement of evidence I have relied on the following statements of evidence:
- (a) Mr Grant Jackson – Miraka.
  - (b) Dr Mark Shepherd – Principal Scientist, Agresearch; and
  - (c) Dr Gavin Sheath – Agricultural Consultant.

- 4.2 The recommendations and my track changes version of the PC1 provisions in this statement of evidence focus solely on the amendments sought by Miraka and supported by its witnesses. I have used the version of the provisions as recommended to be amended in the section 42A Report and identified the amendments now sought by Miraka.
- 4.3 I consider the Miraka position as an interdependent package of amendments. I have not been asked to consider a hybrid of the positions and options put forward to Commissioners by the various parties.
- 4.4 I have considered the amendments to the provisions sought by Miraka against the statutory planning framework including the higher order documents and the provisions of section 32AA.

## 5. **MIRAKA SUBMISSION**

- 5.1 I have reviewed the Miraka submission and further submission and the statements of evidence of the Miraka witnesses.
- 5.2 Miraka's overall position on PC1 and V1 is predominantly one of support for the:
- (a) Vision and Strategy for the Waikato River;
  - (b) Long term water quality improvement objectives;
  - (c) 80 year intergenerational timeframe for achieving water quality targets;
  - (d) Staged approach to the 80 year timeframe;
  - (e) Focus on all four contaminants;
  - (f) Policies and rules for achieving improved water quality;
  - (g) Principles of the FMU/ Sub catchment approach (albeit that the boundaries require redefinition); and
  - (h) Farm Environment Plans (**FEPs**) and Certified Industry Schemes (**CIS**)
- 5.3 The matters with which the Miraka submission does not agree and which the submission says necessitate further refinement of the PC1 planning framework include:
- (a) Adoption of the NRP and 75<sup>th</sup> percentile approach;

- (b) The adoption of a land suitability framework in stage two without a full First Schedule RMA process;
- (c) Scale of FMU boundaries and the disconnect with the sub catchments;
- (d) Untapped opportunity to include specific actions in the PC1 provisions requiring deliberate practice change;
- (e) Untapped opportunity to require good management practices and FEPs across the region on all properties and enterprises;
- (f) Pre determining future allocation methods now;
- (g) Focus on N with a different approach to other contaminants (ie N uses a quantitative approach while other contaminants use GMP/FEPs);
- (h) Use of Overseer and Nitrogen Reference Point (**NRP**) as a regulatory tool.

## **6. FARM ENVIRONMENT PLANS AND GOOD FARMING PRACTICE**

6.1 Farm Environment Plans (FEP) are a critical planning tool within PC1 to manage discharges across a wide variety of farms. They are strongly supported by Miraka and addressed in the Block 2 evidence of Mr Jackson and Dr Sheath. I understand that Miraka already uses a form of farm environment plan as part of Te Ara Miraka.

6.2 I consider FEPs and their related provisions in PC1 to be a very useful and effective planning tool by combining:

- (a) Consistency across the region through the identification of a suite of standards, principles and actions in Schedule 1; with
- (b) The ability to tailor the plan to the individual circumstances of each farm.

6.3 I support the approach in the section 42A report to maintaining and strengthening FEPs across PC1 as core part of the methodology to deliver reductions across all four contaminants.

6.4 I support the Council Officer's proposed changes to Policy 2 so that it is more specific to FEPs. Particularly sub policy a1 '*Set out clear, specific and time framed minimum standards for Good Farming Practice*'.

6.5 I also support the amendments to Policies 1 and 2 that specifically reference Good Farming Practice (GFP) and agree that clearly defining what GFP means will assist plan interpretation and give greater certainty to the farming community. Miraka's

submission sought that all enterprises adopt GFP and the amendments to Policies 1 and 2 satisfy that concern.

- 6.6 In relation to GFPs Mr Jackson's evidence concludes that Farm Environment Plans provide an effective medium in which to achieve farmer practice change to adopt GMP's on-farm and supports the draft FEP template proposed by Council. Use of the proposed Certified Sector Scheme in combination with the FEPs is also supported.
- 6.7 I support Miraka's submission that GFP should be promoted in the provisions and apply to all four contaminants. I have therefore amended Policy 1 to include promotion of GFP.
- 6.8 The Miraka team will offer support to any expert caucusing or information forum on Schedule 1 and defining GFP.

## **7. REMOVAL OF 75<sup>TH</sup> PERCENTILE APPROACH**

- 7.1 Miraka's position is that the 75<sup>th</sup> percentile should be removed from PC1 and an alternative approach adopted to managing diffuse discharges. That alternative involves all enterprises adopting GFP and this should be an adequate substitute for achieving the environmental outcomes sought in PC1 and V1.
- 7.2 The position of the Council Officers in the s42A report is to retain the 75<sup>th</sup> percentile approach which requires those properties with the highest estimated losses to reduce the most. Changes to Policy 1 are proposed to be more explicit about expectations for reductions for those with above average losses and in particular those above the 75<sup>th</sup> percentile. The Officers consider that those who are contributing the most contaminants to the environment should be required to reduce those contaminants and the 75<sup>th</sup> percentile is a good guide to the largest contaminators.
- 7.3 My planning analysis of use of the 75<sup>th</sup> percentile as a regulatory tool for managing the effects of N loss on farms is that:
- (a) In general it can be an effective benchmark tool for identifying activities that may result in a higher level of nitrogen loss and where targeted action may be required to reduce those losses. However, as recorded in the section 42A report, there seems to be some uncertainty about using Overseer as a regulatory tool.
  - (b) Miraka's primary concern with the 75<sup>th</sup> percentile approach is that it is inequitable as it is calculated using Overseer nitrogen leach estimates which

disadvantages certain farms that have high rainfall and "leaky soils". I refer to the evidence of Dr Shepherd and Dr Sheath about the implications of using a 75<sup>th</sup> percentile approach which is based on Overseer estimates of nitrogen leach. This inequity is exacerbated by using large FMUs to generate the 75<sup>th</sup> percentile and so farms with widely different physical characteristics are included. I understand that the 75<sup>th</sup> percentile approach will therefore cause greater impact and disruption to farmers with certain biophysical features. This includes many of Miraka's suppliers and who are further disadvantaged because they cannot sell their property if it is Maori land. Those farmers will have a high NRP relative to the rest of the FMU due to the bio-physical conditions and not any farm management practice.

- (c) I understand that in the longer term Miraka accepts that farms with these types of bio-physical conditions may need to implement significant changes and even change land use but seek they be given more time to adjust,
- (d) Removing the 75<sup>th</sup> percentile will remove this disproportionate impact and give farms with those biophysical conditions time to adjust their practices. This is consistent with minimising the social and economic impact of PC1 and maintaining the communities relationship with the Rivers (as outlined in the objectives to the Vision and Strategy).

7.4 I acknowledge the Officers position that without a 75<sup>th</sup> percentile approach and reductions to that, then it would be difficult to achieve the short term water quality targets. For this reason I support the replacement of the 75<sup>th</sup> percentile approach with Miraka's alternative approach focused on GFP and all enterprises contributing. I rely on the evidence of Dr Sheath and Dr Shepherd that Miraka's approach could achieve similar reductions in nitrogen loss.

7.5 Miraka opposes the recommendation by Officers to extend the targeted focus on properties that fall within the 50<sup>th</sup> - 75<sup>th</sup> percentile for the same reasons it opposes the 75<sup>th</sup> percentile.

7.6 Should Commissioners accept Miraka's concerns and the technical evidence of Dr Sheath my recommendations on amendments to the plan provisions to address these changes are set out in Appendix 1 track changes version of PC1 and V1. They specifically include amendments to Policy 1 to:

- (a) Delete the reference to the 75<sup>th</sup> percentile and requirements to reduce to that level;

- (b) Specifically reference requirements to measure and monitor reduction actions and change;
- (c) Remove targeted focus on properties that fall within the 50<sup>th</sup>-75<sup>th</sup> percentiles of nitrogen leached.

7.7 My recommended changes are included in the Appendix 1 track changes version of PC1 and V1.

## **8. NITROGEN REFERENCE POINT**

8.1 Miraka's primary request is that all references to an NRP should be removed from PC. This is based on the fact that none of the other three contaminants have measurable limits and there should be equity in the treatment of all four contaminants.

8.2 I understand that for the three other contaminants progress to reduce discharges is achieved through identifying risk areas and then identifying appropriate measures to reduce those risks and so reduce the discharges. Miraka seeks that this approach is extended to nitrogen. In addition the NRP is based on an estimate of Nitrogen leach created by Overseer and so has the same disadvantages as discussed above.

8.3 Mr Gavin Sheath's position is that targeted practice change on farm will lead to the improvements in water quality being sought by PC1. This can all happen independently to tracking and baselining.

8.4 However, in my planning view there are some significant benefits in having a quantities tool to identify a baseline of discharges for a point in time and then quantitatively track improvements through mitigation actions and measures.

8.5 Therefore as the Commissioners may wish to retain a tool to track change, Dr Shepherd and Dr Sheath have described other tools that may be similarly effective monitoring baselines that reflect changes in management practices but consistency across catchments is necessary for evaluative purposes.

8.6 I understand that the critical component of all these methods is to focus on Source of Nitrogen Loss, since that can be related directly to management actions on farm, and not Nitrogen Leach.

8.7 I have therefore proposed to amend the plan provisions so that the NRP relates specifically to Nitrogen Surplus. Consequential changes would also be required to Schedule B to remove reference to leach and only refer to nitrogen surplus.

## 9. PRIORITISATION AND GRANDPARENTING

- 9.1 Miraka is opposed to prioritisation of certain catchments and landuse activities such as the diary sector as targets for immediate change. The reasons are that:
- (a) As a starting point everyone should be required to implement GMP. This is necessary if the 75<sup>th</sup> percentile approach is removed from the plan;
  - (b) This approach is inequitable if only certain enterprises have to act;
  - (c) Community cohesion will be severely compromised if just one sector is required to act first. As outlined by Dr Paine in Miraka's Block 1 evidence, one important aspect of practice change is community cohesion.
- 9.2 If some form of prioritisation is considered necessary then a more equitable approach would be a catchment focus rather than a specific sector focus.
- 9.3 Miraka also submitted that the approach in the notified version of PC1 was effectively grandparenting since it locked in existing levels of discharges through an NRP with no clear signal that those people should reduce those discharges. Miraka saw a real risk that this approach is rolled over and becomes a de facto allocation regime in stage 2.
- 9.4 In my opinion, the changes to the policies recommended in the section 42A report go a long way to addressing the concerns about grandparenting and pre-emptive allocation. Policy 4 addresses this issue by requiring that 'all farming activities make further reductions'. And require replacement resource consents rather than rely on a review of exiting consents. (The changes to Policy 4 align with the amendment to Policy 1 to introduce GFP for all farms).
- 9.5 My analysis of the proposed amendments to policy 4 is that it places all landuse activities (regardless of scale and intensity) on notice that practice change (or even more) is required and that will be considered as part of any resource consent process. I accept that this policy creates a level of uncertainty for those activities that rely on existing resource consents and those that will soon apply for new resource consents, particularly those of a scale and intensity where significant investment in land and infrastructure has been made to support farming practice. However, I consider that, policies such as this are necessary if the Council seeks to take deliberate action to achieve a paradigm shift in managing the effects of Nitrogen Loss and encourage farm practice change. And to avoid locking in/protecting existing levels of discharges through resource consents. I also note that the policy and associated planning framework

provide for applications to be made for resource consent and consents to be granted on a case by case basis.

9.6 Policy 5 'Staged Approach' applies a practical approach to implanting the objectives of Plan Change 1 and the Vision and Strategy by recognising that it is not possible to achieve all the necessary changes in the first ten years. I support the reference to minimising social, economic and cultural disruption and consider that this is well supported by the objectives and the higher order documents.

9.7 No changes are recommended to either policy.

## **10. CERTIFIED INDUSTRY SCHEMES**

10.1 The Miraka Submission supports the use of Certified Industry Schemes (**CIS**), and Miraka is in support of the change to the term Certified Sector Schemes. It supports the permitted activity status for farming undertaken under a CIS.

10.2 My planning assessment is that such schemes are a potentially powerful planning tool. They have been given substantial weight in PC1. The benefits are that they are a potentially efficient tool for resourcing the volume of certification required throughout the catchment as a result of the PC1 provisions. It creates an opportunity for private sector to resource and manage the scheme(s) and the certification within them. This assessment supports the evidence of Mr Jackson on the usefulness of the scheme.

10.3 I consider that for these provisions to be effective in practice it is critical for the plan to be absolutely clear as to the purpose of the CIS and how they will be evaluated through the planning process. Schedule 2 provides a very good starting point but could be improved.

**10.4** In addition the Council is placing substantial trust in the Certifiers and I support the recommendation of Mr Jackson that the Council establishes and maintains control over the certifiers by establishing a certification/approval process for each certifier. There may be other potential methods and standards that could apply to a CIS and farming under a CIS.

10.5 I understand that Miraka's legal counsel will address concerns about the legality of the permitted activity rule including 'delegation of this responsibility' from the Council to a third party and compliance with section 70 of the Resource Management Act 1991.

**10.6** On the assumption that the permitted activity rule for farming under a CIS is legally valid and meets the requirements of the Act, I have included that within the track changes.

## **11. CONCLUSION**

11.1 .If the evidence of Dr Sheath and Dr Shepard is accepted by Commissioners the track changes to PC1 and V1 included in Attachment 1 sets out how those changes can be incorporated into PC1 and V1.

**Kim Hardy**

3 May 2019