

BEFORE THE

Waikato Regional Council Hearing
Commissioners

IN THE MATTER

of the Resource Management Act 1991

AND

IN THE MATTER

of Waikato Regional Proposed Plan Change 1 –
Waikato and Waipā River Catchments

**BRIEF OF EVIDENCE IN CHIEF OF JANEEN KYDD-SMITH
ON BEHALF OF THE WAIKATO AND WAIPĀ RIVER IWI
IN RELATION TO THE TOPICS FOR HEARING BLOCK 3
(Submitter No. 74035)**

5 July 2019

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INTRODUCTION

1. My name is Janeen Anne Kydd-Smith.
2. I am a Director and Principal Planner of Sage Planning HB Limited, in Napier.

Qualifications and Experience

3. My qualifications and experience are set out in my 15 February 2019 Statement of Evidence in Chief.
4. I have been engaged by the Waikato and Waipā River Iwi (**River Iwi**) to prepare and present planning evidence in relation to their submissions and further submissions on Proposed Waikato Regional Plan Change 1 – Waikato and Waipā River Catchments (**PC1**), including Variation 1 to PC1.
5. I have previously provided the following statements of evidence:
 - (a) a Block 1 Statement of Evidence in Chief dated 15 February 2019;
 - (b) a Block 1 Rebuttal Statement dated 27 February 2019;
 - (c) a Block 2 Statement of Evidence in Chief dated 3 May 2019; and
 - (d) a Block 2 Rebuttal Statement dated 10 May 2019.
6. I am familiar with the PC1 documents (as notified) and I was also initially engaged by the River Iwi to assist them with the preparation of their submissions and further submissions.

EXPERT WITNESS CODE OF CONDUCT

7. I confirm that I have read the 'Code of Conduct' for expert witnesses contained in the Environment Court Practice Note 2014. In the same way as I would if appearing in the Court, my evidence has been prepared in compliance with that Code. In particular, unless I state otherwise, this evidence is within my sphere of expertise and I have not omitted to consider material facts known to me that might alter or detract from the opinions I express.

EXECUTIVE SUMMARY

8. I do not support the Officers' recommendation to delete Policy 7 in its entirety. Policy 7, alongside Objective 5 and Policy 16, is an important part of achieving the Vision and Strategy (particularly Objective C) and signalling to the community that future allocation will occur and the principles that will be considered as part of that, including allowance for flexibility of development of tāngata whenua ancestral land. I therefore consider that Policy 7 should be retained, but with the amendments requested by the joint submission of the River Iwi and the deletion of clause a. of the Policy.
9. Given my recommendation to retain Policy 7 (with amendments), I consider that the fifth bullet point under the heading "Co-management of the Waikato and Waipā Rivers" in the Background and explanation (page 3 of PC1) should be retained.
10. In relation to the Officers' recommendation to add a new clause h. to Policy 3, I consider that the new clause is confusing and the way it is written is more akin to a rule. It also refers to 'enterprises', which the Officers recommend be deleted from PC1¹. I consider that a much simpler way to address this matter, and avoid repetition, is to amend clause a. of Policy 3.
11. With respect clause d. of Policy 9 (which the Officers' recommend be amended), I consider that the clause should be deleted in its entirety as it relates to matters more appropriately dealt with elsewhere in PC1.
12. I consider that including Implementation Methods that simply reflect what is already covered in the objectives, policies and rules (e.g. proposed Implementation Method 3.11.4.3), and methods that re-iterate Council's statutory requirements or functions (e.g. proposed Implementation Method 3.11.4.6), is unnecessary and relatively meaningless. However, Implementation Methods can enable a plan to identify other ways that the Council will meet the plan's objectives and policies, other than through plan rules, and can helpfully complete the wider 'picture' of everything that is proposed to be done.

¹ Paragraph 569 of the Officers' Report for the Block 3 hearing.

13. If the decision is to retain the Implementation Methods, I recommend that:
- Implementation Method 3.11.4.1 Working with others - should be deleted or amended so it refers only to the Council promoting awareness and providing education to assist in giving effect to the *Vision and Strategy for the Waikato River/ Te Ture Whaimana o Te Awa o Waikato* for the Waikato and Waipā Rivers;
 - Implementation Method 3.11.4.2 Certified Industry Scheme - should be deleted, as it is already effectively dealt with under new Policy 3A: Certified Sector Schemes;
 - Implementation Method 3.11.4.3 Farm Environment Plan - could be retained but amended, as much of it is already dealt with under Policy 2;
 - Implementation Method 3.11.4.4 Lakes and Whangamarino Wetland - should be retained, but amended;
 - Implementation Method 3.11.4.5 Sub-catchment scale planning – this method relates to Policy 9. I consider that it is more helpful than Policy 9 (as it is more comprehensive) and if retained, it should be amended as was requested in the River Iwi submission;
 - Implementation Method 3.11.4.6 Funding and implementation – should be deleted as it represents business as usual for the Council;
 - Implementation Method 3.11.4.7 Information needs to support future allocation, and Implementation Method 3.11.4.8 Reviewing Chapter 3.11 and developing an allocation framework for the next Regional Plan - if Policy 7 is retained (as I have recommended above), these implementation methods could be deleted. However, if Policy 7 is deleted, and the decision is to retain the Implementation Methods, then Methods 3.11.4.7 and 3.11.4.8 should be retained, but could be combined as a single method;
 - Implementation Method 3.11.4.9 Managing the effects of urban development – should be deleted in its entirety, for the reasons given by the Officers;

- Implementation Method 3.11.4.10 Accounting system and monitoring – there is still value in retaining the method if it refers to the Council establishing and operating a publicly available freshwater accounting system that accounts for the diffuse discharges of the four contaminants at the property scale (including multiple properties operating under single resource consents). This information will be particularly relevant to inform any future allocation regime post 2026;
 - Implementation Method 3.11.4.11 Monitoring and evaluation of the implementation of Chapter 3.11 – should be deleted as it represents business as usual for the Council; and
 - Implementation Method 3.11.4.12 Support research and dissemination of best practice guidelines to reduce diffuse discharges – should be retained, but updated to reflect the final positioning on Policies 1 and 2 and the Farm Environment Plan (**FEP**) framework, as it is important that the Regional Council works with industry, Central Government and other regional councils to develop and disseminate Good Farm Practice guidelines for landowners in the Waikato and Waipā River catchments.
14. In relation to Rule 3.11.5.5 Restricted Discretionary Activity Rule – Existing commercial vegetable production, I consider that:
- Condition a. should be amended to refer to “Each property” so that it does not exclude the potential for a resource consent application to be made for several properties that may not include contiguous allotments;
 - New Condition e(ii) should be reworded, to clarify it;
 - New Condition h(ii) should be amended to clarify what the ‘specific minimum standards’ are that it refers to;
 - Clauses i. and viii. of the matters of discretion that are set out under Rule 3.11.5.5 should be amended so they better reflect when compliance and auditing of FEPs will occur; and

- Clause iii. of the matters of discretion under Rule 3.11.5.5 should be amended further to clarify that the baseline losses referred to are those identified under Condition h(iii) of Rule 3.11.5.5.

PURPOSE AND SCOPE OF EVIDENCE

15. This evidence provides a response to the Waikato Regional Council's Reporting Officers' (**the Officers**) Section 42A Report – Block 3: Parts C7-C9 (**Officers' Report**).
16. In preparing my evidence I have reviewed the following:
 - (a) relevant sections of PC1 (including Variation 1);
 - (b) relevant sections of the joint submission and further submissions of the River Iwi;
 - (c) the Officers' Report, particularly in relation to the relevant parts of joint submission and further submissions of the River Iwi;
 - (d) the National Policy Statement for Freshwater Management 2014 (2017 version) (**NPS-FM**); and
 - (e) the Vision and Strategy for Waikato River / Te Ture Whaimana o Te Awa o Waikato (**Vision and Strategy**).²

EVIDENCE

C4.3 POLICY 7 (Preparing for allocation in the future)

17. Policy 7 supports the implementation of the policies and methods in Chapter 3.11, focusing on the collection of information and research to prepare for further reductions, and principles for allocation of discharges based on land suitability in the future.
18. Officers refer to a “preferred future framework” being set out in Policy 7 for allocating contaminant losses on a per property basis and note that the majority of submitters do not agree with that approach or have difficulty with the framework proposed.³ The Officers consider that trying to predict what will be a suitable allocation mechanism for the future is challenging and that the policy and technical framework in a further 10 years or more may be

² Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010, Schedule 2; Ngati Tuwharetoa, Raukawa, and Te Arawa River Iwi Waikato River Act 2010, Schedule 1 and Nga Wai o Maniapoto (Waipā River) Act 2012, Schedule 1.

³ Section C4.3.8 of the Reporting Officer's section 42A report for the Block 3 hearing.

quite different. They also refer to Policy 7 establishing a level of community expectation that is likely to result in farming and business decisions being made on the basis of the policy, with a *“potentially unjustified expectation as to the framework for the future”*.

19. As such, the Officers are concerned that Policy 7 and the associated implementation method are *“at best a statement of intent”* and that *“Any future planning regime will be required to reassess a property level allocation mechanism, if indeed one is appropriate, without pre-judgement as to the best approach”*⁴. Given this, the Officers recommend that Policy 7 be deleted in its entirety, as they consider that, *“whether the framework established in Policy 7 is the best is not able to be judged at this point in time”*⁵.
20. I find it interesting that the Officers consider that Policy 7 establishes a framework for future allocation. In my opinion, it is clear from the current wording in the policy that it only goes so far as identifying ‘principles’ that *“any future allocation should [my underlining added] consider”* (i.e. land suitability, allowance for flexibility of development of tangata whenua ancestral land, minimising social disruption and costs in the transition to a land suitability approach, and future allocation decisions should take advantage of new data and knowledge). In my opinion, this wording indicates principles that should be considered - it does not establish the actual framework or lock any future framework into only having to consider those principles.
21. In that regard, I note that the section 32 Evaluation Report states that Policy 7 *“signals the allocation principles regarding how responsibility for reducing contaminant discharges will be allocated in the next plan change”* and *“signals to the community that future allocation will occur and will use the data collected from farms and other discharges to set aggregate catchment loads”*.⁶
22. The submission of the River Iwi on Policy 7 supports examining a range of approaches to allocation but considers that the language used in the

⁴ Officers’ Report, page 107 at paragraph 482.

⁵ Ibid.

⁶ Page 134 of the Section 32 Evaluation Report for Plan Change 1.

footnote to Policy 7 might constrain these options to just 'land suitability'. The River Iwi consider that, to make an informed decision, the full range of allocation mechanisms should be explored, including land suitability. As such, the River Iwi sought the following amendments to Policy 7 in their submission:

"Prepare for further diffuse discharge reductions and ~~any~~ future property or enterprise-level allocation of diffuse discharges of nitrogen, phosphorus, sediment or microbial pathogens that ~~will~~ may be required by subsequent regional plans, by implementing the policies and methods in this chapter. To ensure this occurs, collect information and undertake research to support this, including collecting information about current discharges, developing appropriate modelling tools to estimate contaminant discharges, and researching the spatial variability of land use and contaminant losses and the effect of contaminant discharges in different parts of the catchment that will assist in ~~defining 'land suitability'~~ preparing any new allocation or management regime.

...

c. Minimise social disruption and costs in transition to ~~the 'land suitability'~~ any new approach; and

...

Footnote 5

5. Future mechanisms for allocation based on land suitability ~~will~~ may consider the following criteria:

...

c. ~~the natural capacity of the landscape~~ within a sub-catchment to attenuate contaminant loss; and"

23. In my opinion, the amendments sought by the River Iwi's submission better support the intention of Policy 7 (as referred to in the section 32 Evaluation Report) to signal allocation principles, but not necessarily limit the new allocation or management regime to them. However, I consider that in order to remove the constraints relating to Footnote 5, as referred to in the joint River Iwi submission, clause a. of Policy 7 (to which the footnote is attached) should also be deleted.
24. Policy 7 has linkages to Policy 16 - Flexibility for development of land returned under Te Tiriti o Waitangi settlements and multiple owned Maori land. This policy relates to the consideration of land use change applications under Rule 3.11.5.7, relating to the development of tangata whenua ancestral lands. Policy 16 states that the "*suitability of the land for development into the proposed new types of land use, reflecting the*

principles of future allocation as contained in Policy 7, including the risk of contaminant discharge from that land and the sensitivity of the receiving water body” will be taken into account when considering such applications.

25. Policy 7 is also linked to Objective 5, which seeks that tangata whenua values be integrated into the co-management of the rivers and other water bodies within the catchment such that:

- “a. *tangata whenua have the ability to:*
 - i. *manage their own lands and resources, by exercising mana whakahaere, for the benefit of their people; and*
 - ii. *actively sustain a relationship with ancestral land and with the rivers and other water bodies in the catchment; and*
- b. *new impediments to the flexibility of the use of tangata whenua ancestral lands are minimised; and*
- c. *improvement in the rivers’ water quality and the exercise of kaitiakitanga increase the spiritual and physical wellbeing of iwi and their tribal and cultural identity.”*

26. The section 32 report⁷ refers to the Vision and Strategy, which has its basis in the settlement legislation, and notes that it is important that tangata whenua values are identified and integrated into the co-management of the Waikato and Waipā Rivers. In addition, it notes that restoring and protecting the relationship of the Waikato River iwi according to their tikanga and kawa, including their economic, social, cultural and spiritual relationships is an objective within the Vision and Strategy⁸. The section 32 report notes that the community, iwi and industry hold high expectations for water quality in the Waikato and Waipā Rivers, “*However, there is a tension between improving the environmental quality of the rivers and allowing for future economic development of Te Ture Whenua and settlement land*”.

27. In relation to Objective 5, the section 32 report refers to the positive social and community benefits arising from the objective, which include, in particular:⁹

- *“acknowledgement of the co-management role that River Iwi have for the Waikato and Waipā Rivers;*

⁷ Pages 96 – 98 of the Section 32 Evaluation Report for Plan Change 1.

⁸ Objective C of the Vision and Strategy.

⁹ Section 32 Report, pages 97 – 98.

- *acknowledgement that there is a tension between restoring and protecting waters and the aspiration for future land use changes;*
- *the exercise of kaitiakitanga as fundamental to cultural wellbeing”.*

28. It also goes on to state the following:

“Land confiscation and settlement processes are addressed between tangata whenua and the Crown, whereas in the context of Plan Change 1, the Regional Council is bound by the RMA functions in s30 RMA. However the use of Maori freehold land under Te Ture Whenua Maori Act 1993 and settlement land has been subject to a series of historical and legal impediments. These impediments are summarised in Coffin, 2016 (Document# 3751561). This historical and current context has affected the relationship of tangata whenua to their land, and their ability to make decisions on the use of that land. This in turn has affected their ability to exercise kaitiakitanga or provide for the social, cultural or economic wellbeing of tangata whenua. These matters are therefore considered to be directly related to RMA provisions.”

29. Therefore, Objective 5 seeks to avoid adding any further restrictions on the use of Māori freehold land under the jurisdiction of Te Ture Whenua Māori Act 1993 and settlement land that would affect the ability of tangata whenua to provide for their social, cultural and economic wellbeing.
30. I note that the Officers recommended (in their Block 1 and Block 2 hearing reports) that Objective 5 and Policy 16 should be retained without amendment, which I supported in my Evidence in Chief for the Block 1 and Block 2 hearings, for the reasons given by the Officers.¹⁰
31. In terms of Policy 7, the section 32 report states that the policy *“signals the allocation principles regarding how responsibility for reducing contaminant discharges will be allocated in the next plan change”* and *“signals to the community that future allocation will occur and will use the data collected from farms and other discharges to set aggregate catchment loads”*.¹¹
32. I therefore consider that it is entirely appropriate to retain Policy 7, but with the amendments requested by the River Iwi submission (as set out above). Policy 7, alongside Objective 5 and Policy 16, is an important part of

¹⁰ Paragraph 439 (page 78) of the Officers’ Block 1 hearing report, and paragraphs 952-964 (pages 152-154) of the Officers’ Block 2 hearing report.

¹¹ Page 134 of the Section 32 Evaluation Report for Plan Change 1.

achieving the Vision and Strategy (particularly Objective C) and signalling to the community that future allocation will occur and the principles that will be considered as part of that, including allowance for flexibility of development of tangata whenua ancestral land.

C4.1 BACKGROUND AND EXPLANATION

33. As a reflection of the Officers' recommendation to delete Policy 7, the Officers recommend that the fifth bullet point under the heading "Co-management of the Waikato and Waipā Rivers" in the Background and explanation (page 3) be deleted. This bullet point refers to "*Preparing for future requirements on what can be undertaken on the land, with limits ensuring that the management of land use and activities is closely aligned with the biophysical capabilities of the land, the spatial location, and the likely effects of discharges on the lakes, rivers and wetlands in the catchment*".
34. This bullet point provides another signal of future changes that are intended to come as part of giving effect to the Vision and Strategy. Given my recommendation to retain Policy 7 (with amendments), in addition to retaining Objective 5 and Policy 16, I consider that the bullet point should also be retained.
35. I note that the Officer's recommend that the last sentence of the last paragraph under the heading "Full achievement of the Vision and Strategy will be intergenerational" in the Background and explanation (page 5) be deleted. I consider that if the fifth bullet point under the "co-management of the Waikato and Waipā Rivers" heading is retained (referred to above), then this sentence is unnecessary and can be deleted.

POLICY 3 (Reducing diffuse discharges from commercial vegetable production systems)

36. The Officers recommend that a number of amendments be made to Policy 3.¹² To better reflect the amendments that Officers have recommended be made to Rule 3.11.5.5, I consider that new clause c. of Policy 3 should be amended as follows:

¹² As set out in the Officer's Block 3 "Tracked Changes" Recommendations.

- “c. ~~Establishing~~ baselines for the following, for each properties
~~from the baseline period using used for commercial vegetable~~
~~production, using data from each year of in the 5 years period~~
~~up to 1 July 2011 to 30 June 2016 for:~~
- (i) the total, maximum area of land in commercial vegetable production; and
 - (ii) the maximum areas of land and their locations per sub-catchment; and
 - (iii) the nitrogen and phosphorus surpluses (i.e. total applied nutrient inputs less crop uptake) for each commercial vegetable production crop; and a description of sediment control measures.
 - (iv) ~~sediment-control measures; and”.~~

37. The Officers note that, while many PC1 mitigations are best applied on individual properties, there are others (such as sediment traps, created wetlands and stream naturalisation) that are sometimes best applied or more efficiently established on a larger scale within a specific sub-catchment.¹³ Pooling of resources by a number of farmers and other agencies, along with coordination, will likely be required. The Officers also state that:¹⁴

“If farmers wish to claim “credit” in a regulatory sense for off-farm mitigation for any of the four contaminants, problems can arise with guaranteeing those credits over the longer-term. While those credits could be recognised in a resource consent framework, some other formal mechanism of protecting and maintaining the physical works, allocating credits and ensuring those credits in the longer term would need to be established. These kinds of issues encourage, in the Officers’ view, a flexible, non-regulatory approach to sub-catchment planning where case-by-case responses can be established. A policy and rule regime that does not preclude this happening is considered a better approach than one where the policies and rules set out how this can happen and try to specify the required pre-conditions.”

38. There are three matters that the Officers seem to be referring to here, and which I consider are being confused:

- (a) The first relates to the allocation of credits for off-farm mitigation.

This is not provided for within PC1, but it will likely form part of any

¹³ Paragraph 162 of the Officers’ Report for the Block 3 hearing.

¹⁴ Ibid.

future allocation regime signalled by PC1 (under Policy 7 and Implementation Methods 3.11.4.7 and 3.11.4.8).

- (b) The second seems to relate to resource consents that may be sought for multiple properties operating within a single sub-catchment, where mitigations are established on a larger scale, across multiple parcels of land.
 - (c) The third relates to a non-regulatory approach to sub-catchment planning, where resources are pooled by a number of farmers and other agencies to align works and services to reduce discharges of the four contaminants (as referred to in Implementation Method 3.11.4.5).
39. The Officers have recommended that a new clause h. be added to Policy 3, although I have not been able to find any direct rationale for it within the Officers' Report for the Block 3 hearing. It seems that the intention of the new clause is to recognise the ability for 'enterprises' operating within a single catchment to apply for resource consents for diffuse discharges from commercial vegetable production in the same way as individual properties. I note that the proposed new clause h. refers to the need for the enterprises to meet clauses a. to d. of Policy 3 and for there to be "clear accounting against contaminant baselines across the multiple properties, including on any land that is no longer used for commercial vegetable production, such that the sub-catchment-wide diffuse discharges progressively decrease".
40. I consider that the new clause is confusing, and the way it is written is more akin to a rule. It also refers to 'enterprises', which the Officers recommend is deleted from PC1¹⁵. In my opinion, a much simpler way to address this matter (if I have understood it correctly), and avoid repetition, would be to amend clause a. of Policy 3, so it reads as follows:
- "a. Enabling commercial vegetable production activities on a property or properties, including the flexibility ..."*
41. I note that the Officers acknowledge that the definition of 'property' excludes non-contiguous allotments, but they consider that this does not preclude

¹⁵ Paragraph 569 of the Officers' Report for the Block 3 hearing.

the ability of a person or entity to apply for several properties to be included under one resource consent or FEP¹⁶. Given this, I consider that there is no need to specifically state this in a new clause in Policy 3, as it has not been done elsewhere in other policies.

POLICY 9 (Sub-catchment (including edge of field) mitigation planning, co-ordination and funding)

42. The Officers recommend that clause d. of Policy 9 be amended as follows:

“d. Allowing where multiple farming enterprises contribute to a mitigation, for the resultant reduction in diffuse discharges to be apportioned to each enterprise in accordance with their respective contribution to the mitigation and their respective responsibility for the ongoing management of the mitigation, provided that the reduction can be confidently secured for the duration of any resource consent; and”.

43. In my opinion, clause d. does not sit well within Policy 9, as it relates to matters (assessment criteria) that the Council will consider as part of resource consent applications and it potentially points to a future allocation regime. These matters are more appropriately dealt with elsewhere in PC1. The clause also refers to ‘enterprises’ which is a word the Officers recommend should be deleted (as I have referred to above). I therefore consider that the entire clause should be deleted, as it is unnecessary and inappropriate.

44. I also consider that, if the decision is to retain the Implementation Methods, it would be better to rely on Implementation Method 3.11.4.5 and delete Policy 9 in its entirety, as the implementation method is more comprehensive and better captures the intention. However, if the decision is to delete the Implementation Methods (as recommended by the Officers), I consider that Policy 9 should be amended to better capture what is included in Implementation Method 3.11.4.5.

C4.2 IMPLEMENTATION METHODS

45. The Officers question the value of the Implementation Methods in Chapter 3.11.4 and whether they will remain relevant and helpful through the 10 year plus life span of the plan change. They note that some methods are

¹⁶ Paragraph 571 of the Officers’ Report for the Block 3 hearing.

related to matters that are “business as usual” matters for the Council (e.g. obtaining funding, monitoring, complying with statutory requirements), while others relate to policies and rules. The Officers recommend that the Implementation Methods be deleted in their entirety¹⁷.

46. The incorporation of methods in regional plans (as well as district plans) is at the discretion of each local authority. Sections 67 and 75 of the RMA require plans to contain the following three items:
 - (a) objectives;
 - (b) policies to implement the objectives; and
 - (c) rules (if any) to implement the policies.
47. Focusing only on these three items does make plans shorter, less complex, and easier to read. Also, in reality, most plan users, including the Environment Court, often refer to little more than the objectives, policies and rules of a plan when making decisions on resource consents.
48. However, including methods can enable a plan to identify other ways that the Council will meet the plan’s objectives and policies, other than through plan rules. As a result, they can helpfully complete the wider ‘picture’ of everything that is proposed to be done.
49. I consider that including implementation methods that simply reflect what is already covered in the objectives, policies and rules (e.g. proposed Implementation Method 3.11.4.3), and methods that re-iterate Council’s statutory requirements or functions (e.g. proposed Implementation Method 3.11.4.6), is unnecessary and relatively meaningless.
50. As such, if Policy 7 is to be retained (as I have recommended above), I consider that Implementation Methods 3.11.4.7 and 3.11.4.8 could be deleted. However, if Policy 7 was deleted, and the decision was to retain the Implementation Methods, then I consider that Methods 3.11.4.7 and 3.11.4.8 should be retained, but could be combined as a single method.
51. Also, in addition to the above, if the Implementation Methods are retained, then I consider that the following amendments should be made to them:

¹⁷ Paragraph 333, page 85, of the Officers’ Report for the Block 3 hearing.

- (a) Implementation Method 3.11.4.1 Working with others: This should be deleted or amended so it refers only to the Council promoting awareness and providing education to assist in giving effect to the *Vision and Strategy for the Waikato River/ Te Ture Whaimana o Te Awa o Waikato* for the Waikato and Waipā Rivers.
- (b) Implementation Method 3.11.4.2 Certified Industry Scheme: This should be deleted, as it is already effectively dealt with under new Policy 3A: Certified Sector Schemes.
- (c) Implementation Method 3.11.4.3 Farm Environment Plan: This could be retained but amended, as much of it is already dealt with under Policy 2. I consider that the first sentence of the method could be retained, which states: “*Waikato Regional Council will prepare parameters and minimum requirements for the development of a certification process for professionals to develop, certify and monitor Farm Environment Plans in a consistent approach across the region*”.
- (d) Implementation Method 3.11.4.4 Lakes and Whangamarino Wetland: This should be retained, but amended to read as follows (for the reasons set out in the River Iwi’s submission on this method):¹⁸

“Waikato Regional Council, working with ~~others~~ stakeholders, will:

- a. Review the areas demarcated as Lakes Freshwater Management Unit when an assessment of the groundwater contribution to each Lake is determined and compared with the surface water catchment.*
- ~~ab.~~ Build on the Shallow Lakes Management Plan by prioritising the development of developing Lake Catchment Plans and...”*
- ~~bc~~ Prepare and implement Lake Catchment Plans with relevant stakeholders (including the community):-*
 - i. A vision for the lake developed in consultation with relevant stakeholders (including the community).”*

The Officers also suggest that amendments to Method 3.11.4.4 may be needed to reflect the final positioning on Policy 14 and FEPs.¹⁹

¹⁸ Refer to paragraphs 158 – 161 of the River Iwi submission.

¹⁹ Paragraph 358 of the Officers’ Report for the Block 3 hearing.

- (e) Implementation Method 3.11.4.5 Sub-catchment scale planning: This method relates to Policy 9. I consider that it is more helpful than Policy 9 (as it is more comprehensive) and if retained I consider that it should be amended to read as follows (as requested in the River Iwi submission²⁰):

*“Waikato Regional Council will work with relevant stakeholders to develop **sub-catchment** scale plans (where a catchment plan does not already exist) and where ~~it has shown to be required~~ developing a plan would result in achieving the 10-year water quality attribute targets more efficiently. **Sub-catchment** planning...”*

- (f) Implementation Method 3.11.4.6 Funding and implementation: This should be deleted as it represents business as usual for the Council.
- (g) Implementation Method 3.11.4.9 Managing the effects of urban development: This should be deleted in its entirety, for the reasons given by the Officers.²¹
- (h) Implementation Method 3.11.4.10 Accounting system and monitoring: The Officers recommend that the method be deleted in its entirety as it overlaps with statutory requirements, generally accepted good practices and business as usual. While the monitoring aspects of the method is Council business as usual, and the NPS-FM requires the Council to establish a freshwater accounting system for water quality (and water quantity), I consider that there is still value in retaining the method if it refers to the Council establishing and operating a publicly available freshwater accounting system that accounts for the diffuse discharges of the four contaminants at the property scale (including multiple properties operating under single resource consents). This information will be particularly relevant to inform any future allocation regime post 2026.
- (i) Implementation Method 3.11.4.11 Monitoring and evaluation of the implementation of Chapter 3.11: This should be deleted as it represents business as usual for the Council.

²⁰ Paragraphs 163 – 165 of the River Iwi’s submission.

²¹ Paragraph 411 of the Officers’ Report for the Block 3 hearing.

- (j) Implementation Method 3.11.4.12 Support research and dissemination of best practice guidelines to reduce diffuse discharges: This should be retained, as it is important that the Regional Council works with industry, Central Government and other regional councils to develop and disseminate Good Farm Practice guidelines for landowners in the Waikato and Waipā River catchments. I agree, however, with the Officers that if the method is retained, it needs to be updated to reflect the final positioning on Policies 1 and 2 and the FEP framework²².

RULE 3.11.5.5

52. I consider that Condition a. of Rule 3.11.5.5 should be amended to require “Each property to be registered with the Waikato Regional Council in conformance with Schedule A”. This amendment recognises the potential for a resource consent application to be made for several properties which may not include contiguous allotments.
53. With respect to the Officers’ recommended amendments to Rule 3.11.5.5²³, I consider that the wording of new Condition e(ii) should be amended to clarify it, as follows:
- “a. *The maximum areas (hectares) of land ~~and their locations, per located within each sub-catchment {referred to in Table 3.11-2}; and~~*”
54. Recommended new Condition h(ii) of Rule 3.11.5.5 requires an FEP to show (as a minimum) “*Adherence to any relevant minimum standards*”. It is not clear to me what relevant minimum standards are being referred to in the condition, therefore, it is impossible for Plan users to know how compliance with the Condition is to be achieved.
55. If there are specific minimum standards that must be adhered to, then I consider that the Condition should be amended to refer to them. Otherwise, if the intention is to require the FEP to offer some minimum standards or mitigation measures that the commercial vegetable production activity will need to adhere to and/or adopt in order to avoid exceeding the baseline contaminant surpluses identified under Condition e(iii) and/or the baseline

²² Paragraph 438 of the Officers’ Report for the Block 3 hearing.

²³ As set out in the Officer’s Block 3 “Tracked Changes” Recommendations.

contaminant surpluses identified under Condition h(iii) of Rule 3.11.5.5, then I consider that the wording of Condition h(ii) should be amended to reflect that.

56. The Officers recommend amending matter of discretion i. (being one of the matters the Waikato Regional Council restricts its discretion to, under Rule 3.11.5.5) so that it refers to "*The content, compliance with and audit of the Farm Environment Plan*". I recognise that this wording was also recommended by the Officers in relation to the matters the Council reserves control over under new controlled activity Rule 3.11.5.2A (in relation to the Block 2 hearing). However, I consider that the recommended wording is inappropriate, as the Council cannot assess compliance before a resource consent has been issued. Instead, I consider that it would be more appropriate to amend matters of discretion 'i.' and 'viii.' under Rule 3.11.5.5 (as well as the equivalent matters of control/discretion under Rules 3.11.5.2A and 3.11.5.4), to read as follows:

"i. The content, ~~compliance with and audit~~ of the Farm Environment Plan".

...

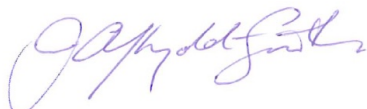
viii. Procedures for reviewing, auditing compliance with, amending and re-certifying the Farm Environment Plan".

57. The Officers also recommend amending matter of discretion 'iii.' (that the Waikato Regional Council restricts its discretion to under Rule 3.11.5.5) so that it reads as follows:

"iii. The actions and timeframes to achieve Good Farming Practices or better and any relevant minimum standards to avoid exceeding baseline losses".

58. I consider that matter of discretion 'iii' should be amended further to clarify that the baseline losses referred to are those identified under Condition h(iii) of Rule 3.11.5.5, as follows:

"iii. The actions and timeframes to achieve Good Farming Practices or better and any relevant minimum standards to avoid exceeding baseline losses identified under Condition h. iii. above".



Janeen Kydd-Smith
5 July 2019