

BEFORE INDEPENDENT HEARING COMMISSIONERS
AT HAMILTON

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of the hearing of submissions on Proposed Plan
Change 1 to the Waikato Regional Plan

**STATEMENT OF PRIMARY EVIDENCE OF
GERARD MATTHEW WILLIS
FOR FONTERRA CO-OPERATIVE GROUP LTD**

RESPONSE TO JWS – TABLE 3.11-1

PLANNING

16 JULY 2019

RICHMOND
CHAMBERS

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1. INTRODUCTION

- 1.1 My full name is Gerard Matthew Willis. A full description of my qualifications and experience is contained in my Block 3 statement of evidence dated 5 July 2019.
- 1.2 This statement of evidence in rebuttal contains my response to the joint witness statement (**JWS**) arising from expert conferencing on Table 3.11- (and dated 17 June 2019).

2. JOINT WITNESS STATEMENT

- 2.1 The JWS records water quality experts' efforts to respond to the Panel's Minute (dated 13 March 2019) seeking clarification of issues with Table 3.11-1 and resolution (if possible) of concerns regarding its robustness and level of 'certainty' and 'completeness' of the provisions.
- 2.2 The result is relatively brief document that attaches some 15 discrete "discussion documents" - one for each attribute that was discussed. I understand that these were developed by sub-groups rather than the being the collective work of all experts. Table 1 of the JWS records (presumably on the basis of the discussion documents) the support/opposition for the inclusion in Table 3.1-11 of the 15 attributes. Table 2 is headed 'Summary of agreement and disagreement for each attribute'. The relationship between Tables 1 and 2 is not clear to me. A fuller explanation of individual experts' position on the attribute discussion paper is attached to the JWS as Attachment 17.
- 2.3 The result is a very complex picture. I also note that the report records that "*documents would have benefited from additional expert discussion*". From a planning perspective I do not find the JWS particularly helpful in terms of justifying whether any additional attributes should be added to Table 13.1-1.
- 2.4 While it is not a "numbers game" I note that Table 1 records unanimous support amongst experts for inclusion in Table 3.11-1 of numeric "states" for nutrients, E.coli and clarity attributes. That is consistent with PC1 as notified. On the other hand, of the 22 experts involved, only Ms McArthur supported numeric attributes for macrophytes, temperature or toxicants.

The overwhelming majority of experts also opposed inclusion of numeric attributes states for deposited sediment, periphyton and fish.

Planning response to the inclusion of further attributes

- 2.5 It is primarily a legal question as to whether there is scope to include further attributes in Table 3.11-1 (particularly those unrelated to the four contaminants that PC1 targets). However, from a planning perspective I would note that whether submissions received seeking further attributes are “on the plan” depends on whether the scope of PC1 is defined by the Vision and Strategy (**V&S**) or by the stated objectives of the Plan (as notified). The former provides an arguably broader scope. The latter more narrowly focuses PC1 on the four “diffuse contaminants”.
- 2.6 In my opinion, the latter course is the preferred interpretation in planning terms. That is because:
- (a) Clear direction given to the Collaborative Stakeholder Group (**CSG**) and associated process on the scope of PC1 and that was limited to the four “diffuse” contaminants. This is discussed in detail in the Block 3 evidence of Ms Justine Young dated 12 July 2019.
 - (b) Adding attributes to Table 3.11-1 is essentially to formulate new and additional freshwater objectives. However, the NPSFM is very clear on the process that must be used to formulate freshwater objectives - and on the consideration that must be given a range of matters (as set out in Part CA f)) before doing so. That process has not been followed in respect of the proposed new attributes (and hence objectives unrelated to the four contaminants)
 - (c) As noted above, the JWS provides a poor basis for a decision maker to expand the scope of Table 3.11-1 (with the weight of expert opinion not supporting a scope beyond the four contaminants and related attributes as discussed above)
 - (d) There is no section 32 evaluation addressing additional attributes and it would be difficult to undertake the required justification and reach the necessary conclusion on the basis of information and evidence currently available.

- (e) It is difficult to conclude that the **V&S** provides scope for a broader Table 3.11-1 at this time because the Waikato River Authority (**WRA**) as the statutory guardian of the V&S has, in neither its submission nor the (Block 1) evidence presented on its behalf by Mr Penter, suggested, or sought, that PC1 extend beyond the four contaminants.¹

3. TEMPERATURE AS AN ATTRIBUTE

- 3.1 The JWS does not make strong a case for the inclusion of temperature as an attribute in Table 3.11-1. Nevertheless, I provide the following planning evaluation as to why including temperature would be unnecessary and inappropriate.
- 3.2 In terms of discharge management, temperature is an attribute that is really only relevant to point source discharges. That is largely because, except insofar as small streams may be shaded, there is little that can be done in the management of diffuse discharges that can reduce temperature.
- 3.3 Furthermore, temperature does not seem to be in scope of PC1 because it is not driven by the discharge of the four contaminants (nor it is a driver of those contaminants).
- 3.4 While I accept that temperature is a key concern in terms of ecosystem health, it is important to remember that PC1 does not constitute the full planning framework for water management in the Waikato and Waipa catchments.
 - (a) Other non-regulatory programmes (including those funded by the WRA) will be important to enhance stream side riparian planting; and
 - (b) Point source discharges are managed by rules contained in the existing “parent” Waikato Regional Plan (while PC1 does include some additional policies that will direct how point source discharge consent application will be assessed, the policy and

¹ Although the WRA did seek strengthening of provisions relating to wetlands and lakes.

rule framework for point source discharges remains part of the operative Regional Plan).

- 3.5 In the discussion document prepared by Dr Daniel (Attachment 14 of the JWS, a proposal is made to include *“the existing limit for the fishery class of 20 degreesas a sensible upper limit”*. In fact, the existing Regional plan includes (at 2.3.4.5) an upper limit of 25 degrees for “significant indigenous fisheries and fish habitat”. The 20 degrees that Dr Daniel refers to relates solely to *significant trout fisheries and trout habitat*. Dr Daniel’s discussion document does not make clear whether the 20 degree attribute state he proposes is intended to apply across the catchment or only to selected streams. From plain reading it seems the former.
- 3.6 It is my understanding that PC1 does not remove the water quality class policies of section 3.2.3 of the Regional Plan nor the associated Surface Water Class Standards of section 3.2.4.2. Those provisions continue to apply to the assessment of discharge consent applications. If temperature was included as a Table 3.11-1 attribute then under 3.2.4.1 e) (as it is proposed to be amended) it would prevail over the existing Surface Water Class Standard.
- 3.7 For clarity, I note also that Rule 3.5.4.5 of the Regional Plan requires consent for any point source discharge that would increase temperature.
- 3.8 I am concerned that a 20 degree maximum temperature attribute state could, if included in PC1, have unintended consequences for point source discharges. I am not aware of any evidence before the Panel of the potential impact of such an attribute state on point source discharges.²
- 3.9 In my opinion, the risk to temperature from point source discharges is already well managed by the provisions of the Regional Plan that remain unaffected by PC1. Applying the trout fisheries’ 20 degree maximum temperature standard from the existing Regional Plan as a bottom line across the Waikato and Waipa catchments would therefore be both unnecessary and inappropriate.

² I am aware, however, that the decision on Fonterra’s Te Awamutu manufacturing site discharge consent records that the Mangapiko Stream is often warmer than 20 degrees upstream of the manufacturing site’s discharge point.

A handwritten signature in blue ink, appearing to read 'Orni'.

Gerard Matthew Willis

16 July 2019