

## **Minute from the Hearing Panel – regarding:**

### **Hearing Panel's questions for the Council during their opening (in response to and in addition to the evidence it has lodged).**

#### **Introduction**

The Hearing Panel (the Panel) has reviewed the Section 42A report Part A - Overview and Context and Part B - Overall Direction, Values and Uses, Science and Economics, Objectives, Limits and Targets, the Council's evidence as the proponent of the Plan Change (PC1), and Mr McCallum-Clark's evidence as the author of the Section 42A report.

Having done so, we have a number of questions for the Council as the proponent of PC1 and for Mr McCallum-Clark. We are posing these now, ahead of the hearing, so that the Council can consider them, and be able to respond to them at the hearing on the 11 and 12 March 2019. We do not expect a written response to them prior to the hearing.

At the time of drafting this Minute, we had not reviewed any submitter evidence filed on Friday 15 February 2019. Once we have done so, it is likely we will have additional questions for the Council. We will pose these at the hearing.

#### **Interpreting and Implementing the Vision and Strategy**

PC1 is required to "give effect" to the Vision and Strategy. The Vision and Strategy contains, amongst other things, the vision, together with a number of objectives and strategies. The Panel foresees that submitters may argue that different elements of the Vision and Strategy suggest different responses. For example, the provisions focussing on restoration and protection of the health and wellbeing of the Waikato River might be seen by some submitters to conflict with sustaining prosperous communities and protecting of the economic relationships some communities have with the River.

Given the legal obligation to give effect to it, does the Council consider that some elements of the Vision and Strategy take precedence? If so, what is the basis for that view, and which elements are prioritised. If the Council considers there is no internal priority, how does the Council suggest the Panel resolve areas of perceived conflict?

Second, Objective k of the Vision and Strategy focuses on water quality being such that it is safe for people to swim in the Waikato River over its entire length. A number of submitters suggest that the achievement of that objective needs to take into account river conditions, e.g. excluding consideration of times when the river is in flood and unsuitable for swimming on that account. How does Council interpret that objective in this regard?

#### **Science and economic modelling underpinning the provisions of PC1**

While Dr Cooper (in his evidence) has provided a general description on the process, given the importance of the numerical targets in Table 3.11.1 – Short and Long term numerical water quality targets for the Waikato and Waipa River catchments, the Panel requests that the Council outline how the input from the Technical Leaders Group(TLG) has 'informed' or 'resulted in' each of the 80 year targets in Table 3.11.1.

Specifically, what was the process the Collaborative Stakeholder Group (CSG) undertook to determine that each of the numerical targets was consistent with the values the CSG had identified, cross referencing the specific technical input the CSG received on each parameter?

### **Collaborative Stakeholder Group (CSG) Process**

Related to the question above, to what extent was the content of the various elements of PC1 the subject of consensus among the CSG?

### **Documents we must: give effect to, not be inconsistent with, have regard to, and take into account**

The Panel is aware that there are a number of planning documents that we need to either give effect to, not be inconsistent with, have regard to, and take into account.

We must give effect to:

- The National Policy Statement for Freshwater Management;
- The New Zealand Coastal Policy Statement;
- The National Policy Statement on Renewable Energy Generation;
- The National Environmental Standard for Sources of Human Drinking Water;
- The Vision and Strategy; and
- The Regional Policy Statement.

We must not be inconsistent with:

- The Regional Coastal Plan.

We must have regard to:

- The Waikato Conservation Management Strategy (2014 - 2024);
- Auckland Waikato Fish and Game Sports Fish and Game Bird Management Plan.

We must take into account:

- the various Iwi Management Plans that are in place.

There may well be other documents.

While there is commentary on some of the documents listed above, the Panel does not recall seeing any commentary on some of the other documents in the section 32 analysis or the 42A report.

We request the Council identify the relevant documents that it considers we need to address, and provide a commentary on those documents that have not been addressed in either the section 32 analysis or the 42A report.

#### **Table 3.11.1 Numerical Values**

As above, a number of submissions seek that water quality data derived at times of high river flows be excluded from consideration when determining compliance with/achievement of the numerical values in the Table. The section 42A report addresses these submissions from a policy perspective, but taking flows above three times median as a possible trigger point, what is the sensitivity of the Table 3.11.1 values to inclusion or exclusion of data when flows are greater than three times median.

Also with respect to Table 3.11.1, can the table please be augmented with columns stating current measured water quality based on the most recent data available and the relevant water quality band in terms of the National Objectives Framework (as per the NPSFM 2014) where applicable for the Panel's reference.

#### **National Policy Statement for Freshwater Management 2014**

Could Council please identify the Freshwater Objectives for the purposes of the NPSFM?

#### **The report - Trends in river water quality in the Waikato region, 1993 - 2017**

The entire premise of the Plan Change is that the surface water network associated with the Waikato and Waipa river catchments is degraded and needs urgent action.

It appears from Table 3.11.1 that the 80 year targets are already met in some sub-catchments, implying that in those sub catchments at least water quality is not degraded. It appears also from reviewing the recently released report, that all the water quality trends (Water Quality) are either neutral or positive, except nitrogen, and in relation to the latter, periphyton is improving and not likely to be an issue.

What does the Council see as the implications of the findings of this report in relation to the PC1 provisions?

#### **Coastal and River interface**

The Department of Conservation in its submissions has set out (in part):

2.3 Coastal Environment & New Zealand Coastal Policy Statement 2010.

21. *The National Policy Statement for Freshwater Management states that the management of coastal water and fresh water requires an integrated and consistent approach. The New Zealand Coastal Policy Statement (NZCPS) itself acknowledges that one of the key issues facing the coastal environment is “poor and declining water quality in many areas as a consequence of point and diffuse sources of contamination, including stormwater and wastewater discharges”.*
22. *As notified, proposed plan change 1 does not give appropriate consideration to the relationship between freshwater quality and the water quality of the coastal environment.*
23. *Objective 1 of the NZCPS is particularly relevant to water quality in the coastal environment. It states “To safeguard the integrity, form, functioning and resilience of the coastal environment and sustain its ecosystems, including marine and intertidal areas, estuaries, dunes and land, by... Maintaining coastal water quality, and enhancing it where it has deteriorated from what would otherwise be its natural condition, with significant adverse effects on ecology and habitat, because of discharges associated with human activity”.*
24. *The proposed plan change must give effect to the NZCPS. Given that the ultimate receiving environment for water from the entire Waikato and Waipā River catchments is the coastal environment at Port Waikato, the proposed plan change therefore must address activities that affect water quality in the coastal environment.* (underling is our emphasis).

Does the Council agree with the DOC submission; to what extent does the Council agree that the NZCPS is relevant to the Panel's consideration of PC1, and how has PC1, or any likely recommended amendments to it, addressed this issue?

#### **Sub-catchment based planning approach**

A number of submitters (eg Wairakei Pastoral Ltd - WPL) have raised the issue of whether a sub-catchment management approach is a more appropriate response than that proposed in PC1.

The Panel's current understanding is that PC1 is focused on preventing land use change where the 4 contaminants are not sufficiently managed, whereas it may be possible that changes in the management approach could also achieve a better environmental outcome without restricting land use change.

As set out in the WPL submission (paragraph 10):

*"A sub-catchment-scale approach encourages a 'local' perspective, which can identify opportunities for concentrated investment in sub-catchment-wide interventions (infrastructure, remediation, mitigation) to interrupt contaminant pathways, revive natural ecosystems and re-establish ecosystem-services".*

The Panel accepts this will be a specific hearing topic and will be the subject of mediation and/or expert conferencing. However, to set a context for the future hearings, how does the Council respond to this suggestion?

## **Rules - Section 9 and section 15**

The Panel accepts that the Rules will be addressed in subsequent hearings, but to set the context for the future hearings asks the following -

Most of the rules appear to be a combination of a section 9 landuse rules and a section 15 discharge rule ( eg Rule 3.11.5.1 - "*The use of land for farming activities .....and the associated diffuse discharge of nitrogen, phosphorus, sediment and microbial pathogens onto into land in circumstances which may result in those contaminants entering water.....*").

Are the rules a land use rule (and 'run' with the land') or a discharge rule (giving rise to the possibility of transfer), or both?

This also raises the question of who 'owns' the Farm Environment Plan (FEP)and any established Nitrogen Reference Point(NRP) (in particular with respect to leased land) and the 'right' to be able to discharge (diffusely) if it is a discharge, as opposed to a land use, consent.

Is it envisaged that any discharge consent is able to be 'transferred' (section 137 - Transferability of discharge permits). If so, what is the likely impact on the land from which the transfer has occurred, which would then either not comply with its FEP, or have a reduced or no ability to diffusely discharge any of the 4 contaminants if the transfer had 'obtained' all of the discharge capacity for the site?

## **Overseer**

The use of Overseer as a tool to establish and then report nitrogen losses from land use is a key aspect of the approach to the management of nitrogen adopted in PC1.

A significant number of submissions have been received in relation to Overseer - including that it is not a reliable regulatory tool for reporting nitrogen losses, and it was designed as an information tool.

Given the range of submissions and the recent (late 2018) report from the Parliamentary Commissioner for the Environment's report on Overseer - what 'position' is the Council likely to take on the use of Overseer in PC1?

## **Certified Industry Schemes**

A number of submitters have raised the vires of the use of "Certified Industry Schemes" and consider the rules (eg 3.11.5.3) essentially delegate a WRC function to industry without proper process, and effectively creates and enables an alternative resource management bureaucracy.

Given the significance of the use of Certified Industry Schemes as part of the FEPs, what 'position' is the Council likely to take on the use of Certified Industry Schemes in PC1?

## **Nitrogen Load to Come**

To give some context to this issue, can the Panel please be provided with maps focusing on the approximate areas where dairy conversions have occurred in two time steps, say 2000-2010 and from 2010 to the most recent point in time that Council has data available (the maps supporting the s32 analysis combine all land uses in different time periods and it is difficult to identify the scale of the changes over time).

## Questions for Mr McCallum - Clark

### Section 42 A report

The Panel accepts that this Section 42A report deals with the Overview and Context, and Overall Directions; and that the detail of recommended amendments to the policies and rules will be in subsequent Block 2 and 3 section 42A reports - noting that Mr McCallum-Clark's evidence<sup>1</sup> states the reporting for Block 2 is now largely complete, with review, integration of different recommendations and cross-checking underway.

However, at this stage of the PC1 process, it will be very helpful to have a more detailed understanding of the potential or likely recommended changes to some of the key provisions in PC1 that have been 'signalled' in the section 42A report.

Paragraphs 132, 133 and 134 of the report (below) suggest a significant shift to some provisions.

*132 Officers broadly agree with a number of the submitters who consider that the PC1 regime with respect to N is costly, inflexible and potentially has a range of unintended consequences. Officers are likely to recommend, in subsequent sections of this Report that are yet to be published, that the following adjustments to the management of N are made:*

- *Increase clarity that no individual can expect to cause an increase in losses or any of the four contaminants, and that the direction of travel is improvement;*
- *The NRP is maintained as a tool, but for some farming systems it will need to be prepared on a one-off basis and subsequently only on demand;*
- *Reducing the need to use Overseer and NRPs for activities that are currently not well represented in the Overseer algorithms, including horses, various less common livestock, and complex farming systems such as commercial vegetable growing;*
- *Maintaining the need for, and possibly increasing, reductions in losses from properties with very high levels of N loss at the time of notification of PC1 and signalling expectations of reductions from those with above-average losses; and*
- *Greater reliance on controls on farming activities through FEPs, particularly by requiring adherence to Good Farming Practices (GFP), demonstration that existing farming activities are not intensifying, and continued specific limitations on significant land use intensification.*

*133 The analysis, reasoning and detailed recommendations will be set out fully in Section C1 of the report, which is yet to be published.*

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<sup>1</sup> paragraphs 27 and 28. .

134 *Two particular elements are worthy of additional comment at this early stage. The first relates to moving towards an explicit requirement for the adoption of GFP, formerly known as Good Management Practices or GMP7. As notified, PC1 relies on FEPs to identify specific mitigation actions and timeframes within which they need to occur. Early testing of this framework with some resource consent applications has identified some shortcomings, and at the same time nationally, and in other regions, there is an increased emphasis on the GFP framework. In the Officers' view this GFP framework has a number of advantages, at a philosophical level in setting outcomes with continuous improvement, in terms of national research and consistency, and in terms of ongoing flexibility. It is only on the basis of widespread adoption of GFP, with positive changes to ensure public confidence in the farming improvements that lead to a reduction in the discharges of all four contaminants, that a reduction of the emphasis on N can be suggested. The second relates to Certified Industry Schemes. As notified, PC1 provides for farming to be a permitted activity, provided the farming activity is "registered to a Certified Industry Scheme". Schedule 2 sets out the criteria for Certified Industry Schemes. Several submitters have questioned the legality of the Certified Industry Scheme provisions, others have sought a 'level playing field' for all farming activities, and others have questioned how WRC will provide oversight and enforcement. Officers note the management efficiencies of farming sector involvement and grouping multiple farming activities under a single management framework, but question whether the Certified Industry Scheme framework provides for improved practices and reduction in discharges, and whether the permitted activity framework meets the requirements of section 70 of the RMA. (underling is our emphasis)*

Can Mr McCallum-Clark further explain these likely 'shifts' so that the Panel and Submitters better understand the detail and implications of these changes now as context for the hearings to come?

Also, on page 19 of the s42A report, the number of sub-catchments, inter alia, where nitrate nitrogen concentrations variously does not meet the MAV and is between half MAV and MAV are listed. Can the Panel please be provided with both a list of the sub-catchments in each category and a colour coded map showing those catchments.

#### **Sub-catchment based planning approach**

Can Mr McCallum-Clark address the **Sub-catchment based planning approach** as set out in the question earlier to the Council?



Greg Hill

Chairman of the Hearing Panel.

19 February 2019