BEFORE THE INDEPENDENT HEARINGS PANEL FOR PROPOSED WAIKATO REGIONAL PLAN CHANGE 1

IN THE MATTER OF the Resource Management Act 1991

AND

IN THE MATTER OF Proposed Waikato Regional Plan Change 1 – Waikato and Waipā River Catchments: Parts C1 – C6

PRIMARY STATEMENT OF EVIDENCE BY PHILIP HUNTER MITCHELL ON BEHALF OF OJI FIBRE SOLUTIONS (NZ) LIMITED FOR HEARINGS PART C1 – C6

3 MAY 2019

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1. SUMMARY

1.1 I consider that PC1 must create a clear framework for requiring, measuring and reassessing demonstrable net improvements in water quality and in reductions of nitrogen, phosphorus, sediment and microbial pathogens over the next approximately 20 years. To do anything less would not, in my opinion, give effect to the Vision and Strategy.

1.2 I consider that in their current form, the objectives and policies set out in PC1, even with the modifications recommended in the section 42A report will not result in clear, consistent, equitable and achievable outcomes that give effect to the Vision and Strategy over the life of the proposed plan change. I have therefore proposed a modified approach for the planning framework that I consider is necessary to give effect to the Vision and Strategy.

1.3 The existing policy and resource consent framework in the Waikato Regional Plan applicable to point source discharges has resulted in significant reductions in contaminant discharges to the Waikato and Waipā Rivers.

1.4 The lack of any effective regulation of diffuse source discharges has resulted in increases in nitrogen and phosphorus loads in the Waikato and Waipā Rivers. In order to reverse this increase and to restore and protect the Waikato and Waipā Rivers (as required by the Vision and Strategy) decisive steps must, in my opinion, be taken now to control diffuse source discharges. I consider that a more comprehensive approach is required in order to achieve the step change reductions in nitrogen and phosphorus that are required.

1.5 In my opinion, the key focus for the PC1 policy framework should be on improving the quality of existing diffuse discharges and in that regard, the majority of diffuse discharges should be regulated by resource consents rather than being undertaken as permitted activities. Hard-edged regulation for diffuse discharges is essential to ensure that

reductions in nitrogen, phosphorus, sediment and microbial pathogens actually occur within a reasonable timeframe to restore and protect the Waikato and Waipā Rivers.

1.6 The framework established via PC1 should require all diffuse dischargers of nitrogen, phosphorus, sediment and microbial pathogens to adopt “best environmental practice” in relation to managing potential diffuse source discharges. A “sinking lid” approach should be established, where the “sinking lids” would be regularly benchmarked, requiring all dischargers to achieve better results without “picking winners”. The “sinking lid” would need to be regularly assessed and reviewed downwards, so that the lowest (worst) performing are always required to improve the most while the highest (best) performing have the least improvement to make and have flexibility to manage their land use activities while maintaining an overall low level of nutrient discharge.

1.7 While seeking to achieve meaningful reductions in contaminant discharges from diffuse and point sources, the provisions must not punish those who have already undertaken measures to reduce these contaminants and who are managing their effects appropriately. Similarly, the provisions must ensure that specific land use practices are not locked in permanently, so that landowners retain options for reducing contaminant discharges.

1.8 If Farm Environment Plans (as proposed in PC1) are to be used for managing reductions in contaminant discharges, they must only be a tool to set out “how” the outcomes specified in resource consents issued in terms of PC1 will be achieved, in the same way that case law has determined that management plans required by resource consent conditions for point source discharges must only be used for determining how the standards specified in consent conditions are to be achieved.

1.9 I consider that the “Nitrogen Reference Point” concept used in PC1 is flawed in that it implies that a standard for nitrogen leaching from soil can be quantitatively determined and enforced. I question whether this concept should ever be used as an enforceable consent condition

standard. In my opinion, a better option would be to prescribe a Nitrogen Assessment Level to be used for the purpose of assessing the performance of individual operations.

1.10 It is acknowledged that there needs to be a pathway for new point source discharges and land use changes. Without such a pathway, it would, in my opinion, be virtually impossible to undertake any new activities in the catchment that involve a discharge. I acknowledge that this is a complex matter.

1.11 In my opinion, when considering resource consent applications made under PC1, to give effect to the Vision and Strategy, the "existing environment" needs to be defined as the environment as it exists now – i.e. on the same basis that a land use situation would be. On a related basis, the rules authorising diffuse discharges should not be categorised as permitted activities.

1.12 Based on the principles and overall framework I outline in my evidence, and taking into account the recommendations in the s42A report, I set out in Appendix 1 an initial draft of the objectives and policies I consider are required in order to give effect to the Vision and Strategy to restore and protect the Waikato and Waipā Rivers in respect of Objective K of the strategy.

1.13 It would be my hope that the Panel provides some interim guidance on the overall shape of the policy framework they consider appropriate, in which case, I consider that witness caucusing could be used to develop a complete and robust set of provisions.

1.14 Also in Appendix 1 I have:

a. Shaded several policies in grey that are matters that require considerable further consideration; and

b. Shaded in blue those policies that are not addressed in my evidence.

2. INTRODUCTION

2.1 My full name is Philip Hunter Mitchell.

QUALIFICATIONS AND EXPERIENCE

2.2 I prepared a statement of planning evidence dated 15 February 2019 on behalf of Oji Fibre Solutions (NZ) Limited (**OjiFS**) for the Part A and Part B hearing considering Proposed Plan Change 1 – Waikato and Waipā River Catchments (**PC1**). I attended the hearing to present that statement on 9 April 2019.

2.3 I have the qualifications and experience set out in paragraphs 2.2 – 2.10 of my previous evidence.

2.4 I confirm that although these proceedings are not before the Environment Court, I have read the Environment Court's Code of Conduct for Expert Witnesses and I agree to comply with this code.

SCOPE OF EVIDENCE

2.5 I have been asked by OjiFS to provide evidence in relation to the matters to be addressed in the Block 2 hearing[1] for PC1 considering submissions on Parts C1-C6: Policies, Rules and Schedules. I have read and considered the Section 42A report relating to the matters to be considered in the Block 2 hearing.

2.6 In my evidence I discuss:

- The approach I have taken in preparing this statement;
- The key principles that I consider the overall policy framework should satisfy;
- An outline of that suggested framework;

[1] Independent Hearings Panel Minute regarding Hearing Schedule dated March 2019.

- The implications of what the "existing environment" connotes for both land use and discharge permit applications; and

- Based on all the above, an initial draft of the objectives and policies I consider to be appropriate.

3. OVERALL APPROACH TO EVIDENCE

3.1 The Section 42 report (**s42A report**) on submissions relating to this hearing[2] observes that[3]:

> The analysis and recommendations of this section of the report are conditional on the outcomes of the Block 1 hearing process, and especially the expert witness caucusing and decisions on Table 3.11-1. The Officers, at the time of writing this report do not know the outcomes of the hearing on the overall direction and objectives.

3.2 That same constraint applies to anyone presenting evidence on Plan Change 1 ("**PC1**") and illustrates the difficulty in terms of seeking to establish an appropriate objective, policy and rule framework.

3.3 Following on from the presentation of my Block 1 evidence,[4] and having assessed the matters to be addressed in Block 2, including reflecting on the changes proposed in Appendix C of the s42A report, I considered it helpful to first set out an overall framework that PC1 would seek to establish.

3.4 In particular, it is clear to me that the overriding objective of PC1 should be to require regular, demonstrable reductions in nitrogen, phosphorus, sediment and microbial pathogens over time. To do anything less would not, in my opinion, give effect to the Vision and Strategy.

3.5 Secondly, whilst it is clear to me that all parties must contribute to reducing nitrogen, phosphorus, sediment and microbial pathogens, the

[2] Section 42A Report, Proposed Waikato Regional Plan Change 1 – Waikato and Waipā River Catchments, Block 2, Parts C1-C6: Policies, Rules and Schedules (most); Waikato Regional Council Policy Series 2019/07; downloaded 5 April 2019.

[3] Section 42A Report, paragraph 11 (section 1.2, page 6).

[4] Primary Statement of Evidence by Philip Hunter Mitchell on Behalf of Oji Fibre Solutions (NZ) Limited dated 15 February 2019, presented on Tuesday, 9 April.

"worst performers" should be expected to shoulder a significant proportion of the reduction required, irrespective of whether they have point or diffuse source discharges.

3.6 A third premise is that the planning timeframe for PC1 must be at the centre of any changes PC1 introduces or seeks to implement. In that regard, I expect it would take several years to embed the changes proposed by PC1 (taking account of hearings, potential appeals, notification of commencement etc.), followed by a requirement to review the plan every ten years. Overall, this means that PC1 could potentially have a planning "lifetime" of up to twenty years. It is this period that I consider the policy framework in PC 1 should focus on, rather than an aspirational eighty-year horizon which the notified version of PC1 contemplated.

3.7 That said, PC1 is the first step in seeking to restore and protect the Waikato and Waipā Rivers in terms of diffuse discharges and will need to be revisited when the Plan is reviewed. Existing Policy 7 in PC1 (Preparing for Allocation in the Future) recognises that future nutrient allocation regimes will require collection of information during the life of PC1 and consideration of a range of factors before future pathways are determined.

3.8 With the above matters in mind, I consider that in their current form, the objectives and policies set out in the section 42A report will not result in clear, consistent, equitable and achievable outcomes that give effect to the Vision and Strategy over the life of the proposed change. I have therefore proposed a modified approach (consistent with that sought by OjiFS in their submission) for the planning framework that I consider is necessary to give effect to the Vision and Strategy.

4. PRINCIPLES TO BE ADOPTED

4.1 I acknowledge that the policy framework proposed in the section 42A report goes some way toward creating an appropriate policy framework for reducing nitrogen, phosphorus, sediment and nitrogen, phosphorus,

sediment and microbial pathogens in the Waikato and Waipā Rivers. However, I do not consider it has sufficiently articulated the key problems and how they need to be addressed. To address this, I started by defining the key principles I considered appropriate and developed a policy framework accordingly. In doing so, I have incorporated those parts of the objectives and policies recommended in the s42A report I consider to be appropriate and proposed alternative measures where they are not.

4.2 I note that Waikato Regional Council Technical Report 2014/56 "*Sources of nitrogen and phosphorus in the Waikato and Waipā Rivers, 2003–12*" concludes that over the period 2003 – 2012 the combined loads of phosphorus discharged by point sources fell by about 30%, and the loads of nitrogen fell by about 7%. Over the same period, the report shows that total nitrogen and phosphorus loads in the Waikato River increased markedly. While the data is now seven years old, it clearly demonstrates that decisive action is needed now in respect of diffuse discharges from farming activities.

4.3 Therefore, I consider that a key focus of the policy framework must be on improving the quality of diffuse discharges, recognising that the Regional Plan already has objectives and policies that can be (and are) used to manage and improve point source discharges, all of which require case by case assessment via the resource consent process. In my opinion, hard-edged regulation for diffuse discharges from farming activities is essential to ensure that reductions in nitrogen, phosphorus, sediment and microbial pathogens actually occur within a reasonable timeframe to restore and protect the Waikato and Waipā Rivers.

4.4 In that regard, I consider that the majority of diffuse discharges from farming activities need to be regulated by resource consents rather than by permitted activity rules. This is detailed further in my evidence below. While this may be seen as an imposition by some, it simply creates a level playing field with every other discharger into the wider Waikato River environment. In my opinion, there has been a lack of regulation of diffuse discharges over the last 30 years primarily as a consequence of

the previously limited understanding of the consequences of nutrients associated with diffuse discharges. However, as the effects of diffuse discharges on the environment have become readily apparent (as documented for example in the State of the Environment report *Environment Aotearoa 2019*[5]), there is no reason for this light-handed approach to continue.

4.5 In my opinion, the framework established via PC1 should also require all diffuse dischargers from farming activities of nitrogen, phosphorus, sediment and microbial pathogens to adopt "best environmental practice".[6] This should not be conflated with "best farming practice" which may be directed, amongst other things, at achieving optimal productivity from a piece of land.[7]

4.6 The framework must also address point source discharges, but in doing so needs to specifically take account of the improvements already made over time, while recognising that the percentage reductions achieved through previous consent processes may not always be able to be continued, especially where treatment is already at or approaching "best practice" levels.

4.7 I consider that PC1 must create a clear framework for requiring, measuring and reassessing demonstrable improvements in water quality and in reductions of nitrogen, phosphorus, sediment and microbial pathogens over the next approximately 20 years, this being the effective life of PC1. This should apply across all sectors.

4.8 If the reductions to be achieved within that timeframe are based on the application of best environmental practice measures, then the ultimate target (in specific water quality terms) does not need to be quantified

[5] Ministry for the Environment & Stats NZ (2019). New Zealand's Environmental Reporting Series: Environment Aotearoa 2019.

[6] Forestry activities are already regulated by the provisions of the Regional Plan and the Resource Management (National Environmental Standards for Plantation Forestry) Regulations 2017.

[7] I note that it is not yet known what the s42A report will say regarding the definition of Good Management Practice (GMP) or Good Farming Practice (GFP). However it is important that this should not focus on productivity issues but should address management of effects on the environment.

now but can be reviewed as part of the plan review process. Not specifying an end-state now means that the focus of PC1 can be on ensuring that demonstrable short-term progress is achieved, with new standards able to be set as part of subsequent plan reviews.

4.9 In my opinion, a clear framework must be established that sets "sinking lid" requirements for diffuse discharges of nitrogen, phosphorus, sediment and microbial pathogens. Such a sinking lid would mean that the onus is on all dischargers to achieve better results without "picking winners", while ensuring that improvement is occurring across the board. The "sinking lid" would need to be regularly assessed and reviewed downwards, so that the lowest (worst) performing (in terms of contaminant discharges) are always required to improve the most, and those that are the highest (best) performing have the least improvement to make. In doing so, I accept that some allowances need to be made for the time required to transition away from unsustainable land management practices, but, that said, the requirement to reduce the discharges of contaminants must be explicit.

4.10 I also consider it important to ensure that operators already performing well in terms of nutrient discharges are not locked into their current state and have some flexibility to manage their land use activities while maintaining an overall low level of nutrient discharge.

4.11 While seeking to achieve meaningful reductions in contaminant discharges from diffuse and point sources, the provisions must not punish those who have already undertaken measures to reduce these contaminants and who are managing their effects appropriately. Similarly, the provisions must ensure that specific land use practices are not locked in permanently, so that landowners retain options for reducing contaminant discharges.

4.12 I consider that if Farm Environment Plans (as proposed in PC1) are to be used for managing reductions in contaminant discharges, they must only be a tool to set out "how" the outcomes specified in resource consents issued in terms of PC1 will be achieved, in the same way that

case law has determined that management plans required by resource consent conditions for point source discharges must only be used for determining how the standards specified in consent conditions are to be achieved. Further in that regard, given how I have suggested that the Farm Environment Plans are constructed, I do not consider the concept of "Certified Industry Schemes" to be necessary or appropriate.

4.13 I also consider that the "Nitrogen Reference Point" concept used in PC1 is flawed in that it implies that a standard for nitrogen leaching from soil can be quantitatively determined and enforced. Uncertainties in the methods for establishing site specific nitrogen reference points make me question whether these could or should ever be used as an enforceable consent condition standard.

4.14 Additionally, the "Nitrogen Reference Point", as contemplated in PC1, as notified, essentially grandparents existing performance, with the poorest performers reaping the greatest rewards, at the cost of the better performers.

4.15 In my opinion, a better option would be to prescribe a Nitrogen Assessment Level (using the same methodology as proposed in PC1 for nitrogen reference points). As the name suggests, this would only be used for the purpose of assessing the performance of individual operations. It would not create any form of allocation or "entitlement" for future nitrogen discharges or act as a proxy for a limit and would serve as a mechanism for identifying which farms need to be subject to earlier regulation during the transition process that is to occur over the life of PC1.

4.16 The provisions of PC1 must make it clear what the expectations and requirements are for all discharges of nitrogen, phosphorus, sediment and, in particular, should establish explicit actions required by those responsible for diffuse discharges to reduce the discharge of nitrogen, phosphorus, sediment and microbial pathogens from their operations. This may be achievable through the use of Farm Environment Plans (but not Certified Industry Schemes) as part of a resource consent

requirement, but the policy framework must explicitly require the necessary reductions to be spelt out in consent conditions.

4.17 It is acknowledged that there needs to be a pathway for new point source discharges and land use changes. Without such a pathway, it would, in my opinion, be virtually impossible to undertake any new activities in the catchment that involve a discharge. I acknowledge that this is a complex matter as I discuss later in my evidence.

5. SUGGESTED FRAMEWORK

5.1 Based on the principles I have outlined above, I consider that the policy framework in the Regional Plan for diffuse source discharges of nitrogen, phosphorus, sediment and microbial pathogens should include:

a) Allowing low impact, small scale operations, or those with an "exemplary" environmental (diffuse source) footprint to operate as "long term" permitted activities, with other diffuse source discharges being "short term" permitted activities only until a sinking lid framework has been implemented.

b) Requiring all point source discharge activities to operate according to resource consents that specify measures to reduce contaminant discharges and the timetable for their implementation over each subsequent 5-year period.

c) For all diffuse discharges requiring the following to be provided (by an appropriate achievable date, no later than (for example) the end of 2021:

i) A calculated Nitrogen Assessment Level for each land use activity or enterprise to be used as a baseline; and

ii) An initial Farm Environment Plan (at either the farm, enterprise or industry scale), detailing the proposed measures, to provide real and enduring nitrogen, phosphorus, sediment and microbial pathogen reductions

and the timetable for their implementation for over each subsequent 5-year period.

d) A mechanism by which those responsible for pastoral land use activities giving rise to diffuse source discharges are advised by the Council of the overall (say) 75th and 50th percentile nitrogen leaching values (calculated from the combined Nitrogen Assessment Levels for each land use activity or enterprise), against which individual enterprise Nitrogen Assessment Levels can be compared, and requiring a resource consent application (involving both a land use and discharge consent component) to be lodged within [a specified timeframe], that includes the following:

   i) Where the Nitrogen Assessment Level for any single farm or activity exceeds the (say) 75th percentile, identification of the actions necessary to reduce nitrogen leaching below the 75th percentile for that activity within the next reporting period;

   ii) For all farms or activities not covered by i) and where the Nitrogen Assessment Level for that activity is between the (say) 50th and 75th percentiles (at the farm, enterprise or industry scale), identification of the available actions for that activity, and those that will be implemented, with the aim of reducing nitrogen leaching losses to a level below the 50th percentile within the next reporting period;

   iii) For all other activities, identification of the available actions for that activity, and those that will be implemented, to further reduce the discharge of contaminants; and

   iv) Amending the relevant Farm Environment Plan to enable compliance with i), ii) and iii) above, as appropriate.

5.2 The framework should also require that every 5 years:

a) The Nitrogen Assessment Level for each activity is recalculated and provided to the Council;

b) The Council notifies the revised 75th and 50th percentile levels and the process outlined in i) – iv) above is repeated (within the construct of the consent granted).

5.3 The above process would require landowners to keep information regarding stock units, fertiliser, farm practices, fencing, planting and other attributes giving rise to (or potentially reducing), for example, nitrogen losses so that the success of steps taken to manage and reduce nitrogen leaching losses can be assessed. Such data would need to be reported to the Council at regular (for example, annual) intervals. This could be based on the provisions in the proposed PC1 Schedule A which sets out the required information and compliance dates for the registration with WRC of all rural properties with an area greater than two hectares.

5.4 Consents granted in respect of such activities should be subject to conditions enabling the conditions to be reviewed under section 128, to reflect the latest benchmarking exercise and to set out the improvements required during the next reporting period.

5.5 I also consider that a consent duration policy is needed that provides security for the investments made in environmental enhancement initiatives, irrespective of whether the discharge is a diffuse or point source discharge. Where significant and enduring steps are being taken to reduce nitrogen, phosphorus, sediment and microbial pathogens over time, a longer duration consent should be considered for any activity (either point or diffuse source), subject to appropriate review. That duration should only relate to environmental enhancement investments undertaken in response to the requirements of PC1.

5.6 Based on the principles and broad framework I have outlined above, taking into account the recommendations in the s42A report, I set out in Appendix 1 an initial draft of the policies I consider are required in order

to give effect to the Vision and Strategy to restore and protect the Waikato and Waipā Rivers in respect of Objective K of the strategy.

5.7 It is noted that policies 3, 4, 14, 15, 16 and 17 (as numbered in the s42A report) are not commented on in this evidence and are therefore retained as set out in the s42A report (albeit with slightly different numbers and shaded in blue).

5.8 As I have stated in paragraph 4.17, I acknowledge that there needs to be a pathway for new point source discharges and land use changes. Without such a pathway, it would, in my opinion, be virtually impossible to undertake any new activities in the catchment that involved a discharge. This is a very complex matter. In that regard, I recognise that proposed Policy 11 of the s42A report does make some provision for new point-source discharges, however, in my opinion, much greater work needs to be done to address how new point source discharges or land use changes would be assessed in the context of giving effect to the Vision and Strategy. Owing to this complexity, I have not undertaken any drafting of my own, and, instead, have included Policy 11, as it is proposed in the s42A report, in Appendix 1 (shaded in grey), as a place holder.

5.9 I am also aware that there is no perfect solution to this issue and there will be as many solutions proposed as there are stakeholders and that no proposal is going to meet everyone's expectations/ wishes. As such a degree of pragmatism is needed in trying to find some sort of principled middle ground. In that regard, the initial draft I set out in Appendix 1 should be seen as just that – an initial draft that would benefit from more time and more perspectives.

5.10 It would be my hope that the Panel provides some interim guidance on the overall shape of the policy framework they consider appropriate, in which case, I consider that witness caucusing could be used to develop a complete and robust set of provisions.

6. THE "EXISTING ENVIRONMENT"

6.1 What constitutes the "existing environment" is important when considering both land use and discharge permit applications. I think it is well-established that when considering land use applications, the environment is that which exists at that time the application is being considered.

6.2 The situation regarding discharge permits is less clear. In that regard, I am aware of the High Court decision on the New Zealand Energy Limited applications for consents relating to the ongoing operation of the Raetihi Hydro Electric Power Scheme[8] where the Court held that the existing environment (for the purposes of that application) did not include the power scheme as it currently operated. If that situation was applied to all discharge permit applications the "existing environment" for the Waikato and Waipā Rivers would be the pre-discharge or pristine situation. That would make a mockery of the Vision and Strategy in that there would be no degradation of the river and no ability (nor need) to improve the situation. Such an approach would mean that land use consents and discharge permits would not exist on a level playing field, because the starting point for considering land use activities would be the current (degraded) environment, while for discharges the starting point would be the pristine scenario. That is neither equitable nor logical.

6.3 In my opinion, when considering resource consent applications made under PC1, to give effect to the Vision and Strategy, the "existing environment" needs to be defined as the environment as it exists now – i.e. on the same basis that a land use situation would be.

6.4 In terms of the policy framework, there are several ways in which that position can be recognised. These would include:

[8] Ngāti Rangi Trust v Manawatu-Wanganui Regional Council [2016] NZHC 2948.

a) A policy explicitly stating that for the purpose of any discharge permit application, the existing environment is defined as being the environment that currently exists; and either

b) Requiring both a land use and discharge permit for all activities involving diffuse discharge and specifying a duration for the land use consent that coincides with that of the discharge permit; or

c) Removing all reference to land use consents in PC1 and instead utilising only discharge permits to regulate both point source and diffuse discharges.

7. CONCLUSIONS

7.1 I consider that PC1 must create a clear framework for requiring, measuring and reassessing demonstrable net improvements in water quality and in reductions of nitrogen, phosphorus, sediment and microbial pathogens over the next approximately 20 years. To do anything less would not, in my opinion, give effect to the Vision and Strategy.

7.2 I consider that in their current form, the objectives and policies set out in PC1, even with the modifications recommended in the section 42A report will not result in clear, consistent, equitable and achievable outcomes that give effect to the Vision and Strategy over the life of the proposed plan change. I have therefore proposed a modified approach for the planning framework that I consider is necessary to give effect to the Vision and Strategy.

7.3 The existing policy and resource consent framework in the Waikato Regional Plan applicable to point source discharges has resulted in significant reductions in contaminant discharges to the Waikato and Waipā Rivers.

7.4 The lack of any effective regulation of diffuse source discharges has resulted in increases in nitrogen and phosphorus loads in the Waikato and Waipā Rivers. In order to reverse this increase and to restore and

protect the Waikato and Waipā Rivers (as required by the Vision and Strategy) decisive steps must, in my opinion, be taken now to control diffuse source discharges. I consider that a more comprehensive approach is required in order to achieve the step change reductions in nitrogen and phosphorus that are required.

7.5 In my opinion, the key focus for the PC1 policy framework should be on improving the quality of existing diffuse discharges and in that regard, the majority of diffuse discharges should be regulated by resource consents rather than being undertaken as permitted activities. Hard-edged regulation for diffuse discharges is essential to ensure that reductions in nitrogen, phosphorus, sediment and microbial pathogens actually occur within a reasonable timeframe to restore and protect the Waikato and Waipā Rivers.

7.6 The framework established via PC1 should require all diffuse dischargers of nitrogen, phosphorus, sediment and microbial pathogens to adopt “best environmental practice” in relation to managing potential diffuse source discharges. A “sinking lid” approach should be established, where the “sinking lids” would be regularly benchmarked, requiring all dischargers to achieve better results without “picking winners”. The “sinking lid” would need to be regularly assessed and reviewed downwards, so that the lowest (worst) performing are always required to improve the most while the highest (best) performing have the least improvement to make and have flexibility to manage their land use activities while maintaining an overall low level of nutrient discharge.

7.7 While seeking to achieve meaningful reductions in contaminant discharges from diffuse and point sources, the provisions must not punish those who have already undertaken measures to reduce these contaminants and who are managing their effects appropriately. Similarly, the provisions must ensure that specific land use practices are not locked in permanently, so that landowners retain options for reducing contaminant discharges.

7.8 If Farm Environment Plans (as proposed in PC1) are to be used for managing reductions in contaminant discharges, they must only be a tool to set out "how" the outcomes specified in resource consents issued in terms of PC1 will be achieved, in the same way that case law has determined that management plans required by resource consent conditions for point source discharges must only be used for determining how the standards specified in consent conditions are to be achieved.

7.9 I consider that the "Nitrogen Reference Point" concept used in PC1 is flawed in that it implies that a standard for nitrogen leaching from soil can be quantitatively determined and enforced. I question whether this concept should ever be used as an enforceable consent condition standard. In my opinion, a better option would be to prescribe a Nitrogen Assessment Level to be used for the purpose of assessing the performance of individual operations.

7.10 It is acknowledged that there needs to be a pathway for new point source discharges and land use changes. Without such a pathway, it would, in my opinion, be virtually impossible to undertake any new activities in the catchment that involve a discharge. I acknowledge that this is a complex matter.

7.11 In my opinion, when considering resource consent applications made under PC1, to give effect to the Vision and Strategy, the "existing environment" needs to be defined as the environment as it exists now – i.e. on the same basis that a land use situation would be. On a related basis, the rules authorising diffuse discharges should not be categorised as permitted activities.

7.12 Based on the principles and overall framework I outline in my evidence, and taking into account the recommendations in the s42A report, I set out in Appendix 1 an initial draft of the objectives and policies I consider are required in order to give effect to the Vision and Strategy to restore and protect the Waikato and Waipā Rivers in respect of Objective K of the strategy.

7.13 It would be my hope that the Panel provides some interim guidance on the overall shape of the policy framework they consider appropriate, in which case, I consider that witness caucusing could be used to develop a complete and robust set of provisions.

7.14 Also in Appendix 1 I have:

a. Shaded several policies in grey that are matters that require considerable further consideration; and

b. Shaded in blue those policies that are not addressed in my evidence.

APPENDIX ONE: SPECIFIC CHANGES SOUGHT

KEY

Blue – proposed text

Bold – existing s42A recommendation/wording

~~Bold strikethrough~~ –existing s42A recommendation/wording proposed to be deleted

Bold shed in blue - existing s42A recommendation that have not been addressed.

Bold shaded in grey - existing s42A recommendation that need further consideration.

OBJECTIVES

1. During the life of the plan, reduce discharges of nitrogen, phosphorus, sediment and microbial pathogens to land and water to achieve restoration and protection of the Waikato and Waipa River progressively and as soon as realistically possible in order to be safe for people to swim in and take food from.
2. **Waikato and Waipā communities and their economy benefit from the restoration and protection of water quality in the Waikato and Waipā River catchments, which enables the people and communities to continue to provide for their social, economic and cultural wellbeing.**
3. Require reductions in discharges of nitrogen, phosphorus, sediment and microbial pathogen to land and water by:
    a. Implementing a "sinking lid" approach; and
    b. Regulating the majority of diffuse discharges through resource consents; and
    c. Continuing to regulate point source discharges through the existing resource consent framework.
4. Reduce discharges of nitrogen, phosphorus, sediment and microbial pathogens to land and water in a manner which maintains or enhances cultural, social and economic wellbeing.

5. **Tangata whenua values are 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.

6.

a. Nitrogen, phosphorus, sediment and microbial pathogen loads in the catchment of Whangamarino Wetland are reduced in the short term, to make progress towards the long-term restoration of Whangamarino Wetland; and
b. The management of contaminant loads entering Whangamarino Wetland is consistent with the achievement of the water quality attribute targets in Table 3.11-1.

POLICIES

Overall **Approach**[9]

1. To require that:
   a. All farmers, businesses and communities ~~will need to contribute~~ to achieving ~~the water quality attribute states in Table 3.11.1~~ Objective 1; and
   b. Changes in practices and activities need to start immediately; and
   c. Diffuse discharges are regularly assessed and reviewed downwards; and
   d. The rate of change is ~~will need to be~~ staged over the coming decades to minimise social, economic and cultural disruption and enable innovation and new practices to develop; and
   e. Responding to the reasonably foreseeable effects of climate change will mean that different regulatory and non-regulatory responses may be needed in the future.

Best Environmental Practice[10]

2. **Require any person undertaking a diffuse discharge of nitrogen, phosphorus, sediment and microbial pathogens to water or onto or into land in the Waikato and Waipa River catchments to, as a minimum, adopt ~~the best practicable option~~ best environmental practice to avoid or mitigate the adverse effects of the discharge.**

[9] Previously Policy 5 of the s42A Report Tracked Changes Version
[10] Previously Policy 11 of the s42A Report Tracked Changes Version

Tailored approach to reducing diffuse discharges from commercial vegetable production systems[11]

3.

a. **Flexibility is provided to undertake crop rotations on changing parcels of land for commercial vegetable production, while reducing contaminant discharges over time; and**
b. **The maximum area in production for a property or enterprise is established and capped utilising commercial vegetable production data from the 10 years up to 2016; and**
c. **Establishing a Nitrogen Reference Point for each property or enterprise; and**
d. **A 10% decrease in the diffuse discharge of nitrogen and a tailored reduction in the diffuse discharge of phosphorus, sediment and microbial pathogens is achieved across the sector through the implementation of Best or Good Management Practices; and**
e. **Identified mitigation actions are set out and implemented within timeframes specified in wither a Farm Environment and associated resource consent, or in specific requirements established by participation in a Certified Industry Scheme.**
f. **Commercial vegetable production enterprises or reduce nitrogen, phosphorus, sediment and microbial pathogens are enabled; and**
g. **The degree of reduction in diffuse discharges of nitrogen, phosphorus, sediment and microbial pathogens is proportionate to the amount of current discharge (those discharging more are expected to make greater reductions), and the scale of water quality improvement required in the sub-catchment.**

Activity Classification

4.

a. Provide for permitted activities only:
    i. For those activities with **a low level of contaminant discharge to water bodies**; or
    ii. As a short-term measure:
        1. During which there is transition away from unsustainable land management practices; and
        2. Provided that the requirements of [rule to be inserted] have been satisfied (the purpose of which is to implement Policy 8a).
b. Require resource consents for all other activities, addressing the matters contained in Policies 5 - 15.

REGULATING DIFFUSE DISCHARGES

5. Require all farming activities, other than those permitted by permitted activity rule [to be inserted], to apply for a discharge permit[12] for all diffuse discharges by [date to be inserted], whereby:

[11] Previously Policy 3 of the s42A Report Tracked Changes Version

[12] Assumes that discharges will be managed via discharge permits rather than land-use consents – see evidence paragraph 6.4.

a. An application for farming activities with a Nitrogen Assessment Level above the 75th percentile is to be a discretionary activity; and
b. An application for farming activities with a Nitrogen Assessment Level between the 50th and the 75th percentile is to be a restricted discretionary activity; and
c. An application for farming activities not provided for by (a) and (b) above is to be a controlled activity.

Farm Environment Plans[13]

6. Require all resource consent applications for farming activities to be accompanied by a Farm Environment Plan, prepared at either a farm, enterprise or industry scale, which:
    a. Sets out and justifies best environmental practice (which should include and consider stock density) and presents and justifies a timetable for the implementation of best environmental practice; and
    b. Additionally, details the actions being taken to implement best environmental practice; and
    c. Details the actions necessary to, as a minimum:
        1. Promptly reduce nitrogen leaching losses to below the 75th percentile where the Nitrogen Assessment Level for the farm exceeds the 75th percentile; or
        2. Reduce the nitrogen leaching losses to below the 50th percentile for all farms not covered by (i) where the Nitrogen Assessment Level is between the 50th and 75th percentile; or
        3. For all other farms, identify the available actions for that farm operation, and those that will be implemented, to further reduce the discharge of contaminants; and
    d. Is **flexible and** is **able to be updated so that continuous improvement, new technologies and mitigation practices can be adopted**; and
    e. Identifies how information regarding stock units, fertiliser, farm practices, fencing, planting etc. relating to measures taken to manage nitrogen leaching losses will be recorded, kept and reported to Council.

7. Require all resource consents to include a condition requiring the Farm Environment Plan to be updated and submitted to Council every 5 years following recalculation of the 75th and 50th percentile nitrogen leaching values.

Nitrogen Assessment Levels

8. Benchmark the performance of individual farm operations by:
    a. Requiring Nitrogen Assessment Levels for individual farms to be established and submitted to Council by [date to be inserted]; and

[13] Previously Policy 2 of the s42A Report Tracked Changes Version

b. Requiring the Nitrogen Assessment Levels to be recalculated and submitted to Council every 5 years thereafter; and
c. Requiring Council to:
    i. Calculate the 75th and 50th percentile nitrogen leaching values within [time to be inserted] of receiving the Nitrogen Assessment Level information; and
    ii. Directly advise all farmers of the 75th and 50th percentile nitrogen leaching values within [time to be inserted] of calculating the information.

PREPARING FOR ALLOCATION IN THE FUTURE[14]

9. **Prepare for further diffuse discharge reductions and any future property or enterprise-level allocation of diffuse discharges of nitrogen, phosphorus, sediment and microbial pathogens that will 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'.**

Any future allocation should consider the following principles:

a. Land suitability which reflects the biophysical and climate properties, the risk of contaminant discharges from that land, and the sensitivity of the receiving water body, as a starting point (i.e. where the effect on the land and receiving waters will be the same, like land is treated the same for the purposes of allocation); and
b. Allowance for flexibility of development of tangata whenua ancestral land; and
c. Minimise social disruption and costs in the transition to the 'land suitability' approach; and
d. Future allocation decisions should take advantage of new data and knowledge.

REGULATING **POINT SOURCE DISCHARGES**[15]

10. **When deciding resource consent applications** for point source discharges**, consider the contribution ~~made by a point source~~** the **discharge** makes **to the nitrogen, phosphorus, sediment and microbial pathogen catchment loads~~ and the impact of that contribution on the achievement of the short term water quality attribute~~**

[14] Previously Policy 7 of the s42A Report Tracked Changes Version
[15] Previously Policy 12 of the s42A Report Tracked Changes Version

~~states in table 3.11.1 or the progression towards the 80-year water quality attribute states in Table 3.11.1~~, taking into account:

a. The relative proportion of nitrogen, phosphorus, sediment and microbial pathogens that particular point source discharges contribute to the catchment load; and
b. Past upgrades undertaken or measures implemented (including their success) to reduce the discharge of nitrogen, phosphorus, sediment or microbial pathogens within the previous consent term; and
c. The options available to reduce the discharges of nitrogen, phosphorus, sediment or microbial pathogens; and
d. Best practicable option.

Provide for point source discharges of regional significance

11. **When deciding resource consent applications for point source discharges of nitrogen, phosphorus, sediment or microbial pathogens to water or onto land, provide for the:**
    a. **Continued operation of regionally significant infrastructure; and**
    b. **Continued operation of regionally significant industry**; and
    c. The establishment of new regionally significant infrastructure and regionally significant industry where doing so would give effect to the Vision and Strategy for the Waikato and Waipā River catchments.

Application of Best Practicable Option and mitigation of offset effects to point source discharges[16] [17]

12. **Require any person undertaking a point source discharge of nitrogen, phosphorus, sediment or microbial pathogens to water or onto or into land in the Waikato and Waipa River catchments to, as a minimum, adopt the Best Practicable Option to avoid or mitigate the adverse effects of the discharge.**

Where any adverse effects cannot be reasonably avoided, they should be mitigated, and where they cannot be reasonably mitigated, it is encouraged that an offset measure be proposed in an alternative location or locations to the point source discharge, for the purpose of ensuring positive effects on the environment to lesson any residual adverse effects of the discharge that will or may result from allowing the activity provided that the:

Primary discharge does not result in any significant or toxic adverse effects at the point source discharge location; and

a. Offset measure if or the same contaminant; and
b. Offset measure occurs preferably within the same sub-catchment in which the primary discharge occurs and if this is not practicable, then within the same Freshwater Management Unit of a Freshwater Management Unit located upstream, and

[16] Previously Policy 11 of the s42A Report Tracked Changes Version

[17] As stated in para 5.7 of my evidence, significant work is required to be done on this policy to provide a pathway for new point-source discharges and change of land use.

c. Offset measure remains in place for the duration of the consent and is secured by consent condition or another legally binding mechanism.

REGULATING ALL DISCHARGES

Discharge **consent duration**

13. **When determining an appropriate duration for any** diffuse or **point source discharge consent granted, consider the following matters:**
    a. **The appropriateness of a longer consent duration, where the applicant:** ~~**demonstrates that the discharge is consistent with achieving the water quality attribute states set out in Table 3.11-1** :The magnitude and significance of the investment made or proposed to be made in contaminant reduction measures and any resultant improvements in the receiving water quality; and The need to provide appropriate certainty of (including investment in treatment plant upgrades or land based application technology).~~
        (i) For diffuse discharges, demonstrates that the proposal will generate substantial reductions in discharges contributing to the achievement of Objective 1; or
        (ii) For point source discharges, demonstrates that there will be a net improvement in the water quality of the Waikato and Waipa Rivers contributing to the achievement of Objective 1; or
        (iii) Has proposed measures and/or methods to reduce the discharge of contaminants, where the ability to successfully implement the measures proposed has been adequately demonstrated and/or where meaningful reductions in the levels of nitrogen, phosphorus, sediment and microbial pathogens discharges will be achieved; and
    b. The extent and efficacy of past measures taken to reduce diffuse discharges of nitrogen, phosphorus, sediment and microbial pathogens; and
    c. The need to provide appropriate certainty of investment where contaminant reduction measures are proposed (including investment in treatment plant upgrades or land-based application technology).

14. Existing Environment

    Applications for discharge permits are to be assessed against the existing environment as if it includes the effects of any existing authorised discharges.

15. Providing for Innovation

    To encourage and facilitate innovation, alternative mechanisms and methods that will result in reductions in discharges of nitrogen, phosphorus, sediment and microbial pathogens.

Future discharge reductions[18]

16. **To recognise that future regional plan changes or regional plans are likely to require all farming activities make further reductions in the diffuse discharges of nitrogen, phosphorus, sediment and microbial pathogens in order for Objective 1 to be met.**

Lakes Freshwater Management Units[19]

17. **Restore and protect lakes by 2096 through the implementation of a tailored lake-by-lake approach, guided by Lake Catchment Plans prepared over the next 10 years, which will include collecting and using data and information to support improving the management of land use activities in the lakes Freshwater Management Units.**

Whangamarino Wetland[20]

18. **Protect and make progress towards restoration of Whangamarino Wetland by reducing the diffuse discharge of nitrogen, phosphorus, sediment and microbial pathogens in the sub-catchments that flow into the wetland to:**
    a. **Reduce and minimise further loss of the bog ecosystem; and**
    b. **Provide increasing availability of mahinga kai; and**
    c. **Support implementation of any catchment plan prepared in future by Waikato Regional Council that covers Whangamarino Wetland.**

Flexibility for development of land returned under Te Tiriti o Waitangi settlements and multiple owned Maori land[21]

19. **For the purposes of considering land use change applications under Rule 3.11.5.7, land use change that enables the development of tangata whenua ancestral lands shall be managed in a way that recognises and provides for:**
    a. **The relationship of tangata whenua with their ancestral lands; and**
    b. **The exercise of kaitiakitanga; and**
    c. **The creation of positive economic, social and cultural benefits for tangata whenua now and into the future;**

    Taking into account:
    i. **Best management practice actions for nitrogen, phosphorus, sediment and microbial pathogens for the proposed new type of land use; and**
    ii. **The suitability of the land for development into the proposed new type of land use, reflecting the principles for future allocation as contained in Policy 7, including the risk of contaminant discharge from that land and the sensitivity of the receiving water body; and**
    iii. **The short term water quality attribute states to be achieved in Objective 3.**

[18] Previously Policy 4 of the s42A Report Tracked Changes Version
[19] Previously Policy 14 of the s42A Report Tracked Changes Version
[20] Previously Policy 15 of the s42A Report Tracked Changes Version
[21] Previously Policy 16 of the s42A Report Tracked Changes Version

Considering the wider context of the Vision and Strategy[22]

20. **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 Waipa Rivers that fall outside the scope of Chapter 3.11, but could be considered secondary benefits of methods carried out under this Chapter, including, but not limited to:**

    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.**

[22] Previously Policy 17 of the s42A Report Tracked Changes Version