

Before an Independent Hearings Panel

The Proposed Waikato Regional Plan Change 1

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

IN THE MATTER OF the Proposed Waikato Regional Plan Change 1, Block 1 Hearings:
TOPIC - PART B – Outcomes
B5 FMUs, sub-catchments, targets and limits, priorities

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

(Planning)

Dated: 15 February 2019

BUDDLE FINDLAY

NEW ZEALAND LAWYERS

Barristers and Solicitors

Auckland

Solicitor Acting: **Jennifer Caldwell / Mathew Gribben**

Email: jennifer.caldwell@buddlefindlay.com / mathew.gribben@buddlefindlay.com

Tel 64-9-358 2555 Fax 64-9-358 2055 PO Box 1433 DX CP24024 Auckland 1140

1. EXECUTIVE SUMMARY

- 1.1 The Miraka Limited submission and further submission generally supports the provisions of Plan Change 1 (**PC1**) and Variation 1 (**V1**).
- 1.2 A number of changes are proposed in the Miraka submission to the plan objectives, policies and rules to enhance equity amongst landowners and require deliberate action to improve practice change.
- 1.3 In this statement I set out the reasons why I consider the amendments proposed in the Miraka submission (as they relate to this Block 1 topic area) are consistent with the Vision and Strategy for the Waikato River (**Vision and Strategy**) and the National Policy Statement Freshwater Management 2014¹ (**NPSFM**).
- 1.4 The specific relief sought and amendments to the plan provisions in this statement relate only to Hearing Topic B5 Freshwater Management Units (**FMUs**) and sub-catchments.
- 1.5 Miraka's submission is that the Freshwater Management Unit (**FMU**) and sub-catchment boundaries require re-alignment to achieve more equitable water quality outcomes that balance the need to improve water quality with the potential impact on people and business. Re-alignment of these boundaries also presents an opportunity to achieve better community recognition and participation in catchment management.
- 1.6 Amendments sought to the full plan change provisions will be addressed in statements of evidence in subsequent hearings blocks under the topic areas not addressed in this hearing block.
- 1.7 Whilst earlier Miraka witnesses have identified the benefits of practice change and signalled the need for amendments to PC1, the planning evidence on those changes will be provided at subsequent hearing(s).

2. INTRODUCTION

- 2.1 My full name is Elizabeth Kim Hardy. I have over 25 years' experience in resource management planning.
- 2.2 My qualifications include a BSocSci in Geography and MSocSci (Hons) in Resources and Environmental Planning.

¹ Updated August 2014 to incorporate amendments from the National Policy Statement for Freshwater Amendment Order 2017.

- 2.3 I have been a Full Member of the New Zealand Planning Institute since 1995.
- 2.4 I am currently Technical Director - Planning at AECOM, a multidisciplinary planning, environmental and engineering practice. Whilst based in Auckland I work throughout New Zealand in plan policy and rule formulation, resource use and allocation and preparation of resource consent applications and AEEs across the full spectrum of urban, district and regional resource management matters. A large part of my day to day planning practice involves interpreting and advising clients on regional and district plan provisions. I am an experienced expert witness for Council and Environment Court proceedings. I was an expert witness in the Waikato Regional Council Variation 6 Environment Court proceedings which included court-directed witness conferencing. I am also an experienced Independent Hearings Commissioner.
- 2.5 My evidence is given in support of the submission made by Miraka to PC1 and V1.
- 2.6 I have read the Environment Court's Code of Conduct for Expert Witnesses, and I agree to comply with it. My qualifications as an expert are set out above. I confirm that the issues addressed in this brief of evidence are within my area of expertise. I have not omitted to consider material facts known to me that might alter or detract from the opinions expressed.
- 2.7 I was engaged by Miraka Limited to provide planning evidence in respect of PC1 and V1 in January 2019. I have not participated in any stakeholder collaborative or expert conferencing process in respect of PC1 and V1.
- 2.8 I would be available for expert witness conferencing should that be requested by the panel.

3. SCOPE OF EVIDENCE

- 3.1 This statement of evidence is focused on consistency of the Miraka submissions on Block 1 matters with the statutory planning context including:
- a. *National Policy Statement Freshwater Management (NPSFM).*
 - b. *Vision and Strategy for the Waikato River.*
- 3.2 The specific provisions of the PC1 and V1 Planning framework that I comment on in this Block 1 statement of evidence include the FMU and Sub-Catchment boundaries.
- 3.3 In preparing this statement of evidence I have relied on the following statements of evidence:

- (a) Mr Richard Wyeth – Chief Executive Miraka;
- (b) Mr Grant Jackson – Milk Supply Manager Miraka;
- (c) Dr Gavin Sheath – Agricultural Consultant;
- (d) Dr Mark Paine –Practice Change consultant; and
- (e) Ms Jude Addenbrooke – Environmental Consultant.

4. MIRAKA SUBMISSION

4.1 I have reviewed the Miraka submission and further submission and the statements of evidence of all the Miraka witnesses, including the corporate witnesses.

4.2 Miraka’s overall position on PC1 and V1 is predominantly one of support for the:

- (a) Vision and Strategy for the Waikato River;
- (b) Long term water quality improvement objectives;
- (c) 80 year intergenerational timeframe for achieving water quality targets;
- (d) Staged approach to the 80 year timeframe;
- (e) Focus on all four contaminants;
- (f) Policies and rules for achieving improved water quality;
- (g) Principles of the FMU/Sub-catchment approach (albeit that the boundaries require redefinition); and
- (h) Farm Environment Plans (**FEPs**) and Certified Industry Schemes (**CIS**).

4.3 The matters with which the Miraka submission does not agree and which the submission says necessitate further refinement of the PC1 planning framework include:

- (a) Adoption of the NRP and 75th percentile approach;
- (b) The adoption of a land suitability framework in phase two without a full First Schedule RMA process;
- (c) Scale of FMU boundaries and the disconnect with the sub-catchments;
- (d) Untapped opportunity to include specific actions in the PC1 provisions requiring deliberate practice change;

- (e) Untapped opportunity to require good management practices and FEPs across the region on all properties and enterprises;
- (f) Pre determining future allocation methods now;
- (g) Focus on N with a different approach to other contaminants (ie N uses a quantitative approach while other contaminants use GMP/FEPs); and
- (h) Use of Overseer and Nitrogen Reference Point (**NRP**) as a regulatory tool.

4.4 In this statement of evidence I address only the amendments proposed in the Miraka submission in relation to FMUs and Sub-catchments (4.4(c)). I understand that the other matters in 4.4(a)-(h) above which are not supported in the Miraka submission will be addressed by the Council in more detail in subsequent s42A reports and hence also in statements of planning evidence to follow.

5. STATUTORY FRAMEWORK

5.1 The underpinning statutory framework for preparation of PC1 and V1 is set out in detail in the s42A report and includes the Resource Management Act 1991 (RMA), the NPSFM, the Waikato Regional Policy Statement and the Vision and Strategy for the Waikato River (which is incorporated into the RPS). The RMA requirements and other relevant statutory framework documents are comprehensively addressed in the s42A report.

5.2 In this statement I focus on my planning assessment of the consistency of the Miraka submissions and relief sought with the provisions of the NPSFW and the Vision and Strategy for the Waikato River.

National Policy Statement on Freshwater Management

5.3 I have reviewed the NPSFM and consider that the overarching principles of the Miraka submission, that focus on the wellbeing of both people and the environment within identified limits, are consistent with the objectives and policies of the NPSFM.²

5.4 Objective AA1 'Te Mana o te Wai' of the NPSFM very clearly sets out the requirement to recognise Te Mana o te Wai noting that:

- (a) 'te Mana o te Wai recognises the connection between water and the broader environment – Te Hauora o te Taiao (the health of the environment), Te Hauora o

² I note the comment of the Reporting Planner that the NPS FM is subject to review and that further advice to the panel on the status of the NPSFM will be provided as the hearing progresses.

te Wai (the health of the waterbody) and Te hauora o te Tangata (the health of the people); and

- (b) Values identified through engagement and discussion with the community, including tangata whenua, must inform the setting of freshwater objectives and limits.

5.5 I read this objective as a very clear direction to involve people and in particular communities in the setting of freshwater objectives and limits. I consider this would logically extend to opportunities to involve people and communities in the process of defining management units, including their boundaries and ongoing management.

5.6 From my review of the NPSFM and the provisions of PC1 and V1 I consider that further amendments to PC1 and V1 can be made in line with the Miraka submission without detracting from the objectives and policies of the NPSFM.

5.7 Given the scope of this Block 1 hearing and the recommendations of the Council's s42A report, the amendments proposed in this statement of evidence are focused on the B5 Topic of FMUs and Sub-Catchments only. Further amendments to the broader suite of PC1 and V1 provisions will be addressed under further subsequent hearing topics.

5.8 I address the specific amendments in relation to FMUs and Sub-catchments below. I consider the amendments recommended in these paragraphs are consistent with the NPSFM.

The Vision and Strategy for the Waikato River

5.9 I have undertaken a planning review of the Vision and Strategy, as incorporated into the RPS, and consider that the amendments sought by Miraka are consistent with that document, particularly as the Vision and Strategy relate to both people and the environment:

*'Our vision is for a future where a healthy Waikato River sustains abundant life and prosperous communities who, in turn, are all responsible for restoring and protecting the health and wellbeing of the Waikato River, and all it embraces, for generations to come.'*³

5.10 The amendments sought by Miraka to PC1 including practice change, monitoring and re-distribution of the Freshwater Management/Sub-catchment Unit boundaries are supported by the Vision and Strategy. The objectives of the Vision and Strategy whilst principally concerned with restoration of the health of the Waikato River very explicitly

³ Waikato River Authority Vision and Strategy for the Waikato River page 6.

acknowledge the need to recognise and protect the relationships of communities with the Waikato River:

Objective d: 'The restoration and protection of the relationship of the Waikato region's communities with the Waikato River including their economic, social, cultural and spiritual relationships'.

5.11 Miraka's proposed new Freshwater Management / Sub-catchment Units are intended to better reflect the identity of communities. As a result Miraka's approach is more likely to achieve this objective than the notified PC1 version by creating a stronger relationship between each community and the River.

5.12 The Miraka proposed amendments if adopted are also consistent with the specific strategies⁴ to be implemented including:

- (a) Development of targets;
- (b) Developing and implementing a programme of action to achieve those targets;
- (c) Establishing the current health status of the Waikato River;
- (d) Developing and promoting best practice methods;
- (e) Whole of river approach; and
- (f) Managing cumulative effects of activities through statutory documents.

5.13 Strategy 8 specifically recognises the need to promote and foster public knowledge and understanding:

Strategy 8: Actively promote and foster public knowledge and understanding of the health and wellbeing of the Waikato River among all sectors of the Waikato Regional Community.'

5.14 The amendments sought by Miraka are founded on the company's own principles⁵ and reflected in the Miraka Environmental Policy statement. The Miraka Environmental Policy states that Miraka has '*...a strong focus on incorporating the Company values of tikanga, kaitiakitanga, innovation, integrity and excellence throughout the business practice.*' The company's environmental policy includes:

'Supporting our farmer suppliers to achieve best practice via the Te Ara Miraka farm excellence program and remunerating them based on the objectives achieved under that program;

Ensuring there are systems in place to prevent pollution, reduce waste and minimise consumption, and in the event environmental failures do occur, there is a culture which encourages learning and improvement to prevent future failures.

⁴ Ibid page.

⁵ As set out in the evidence of Mr Grant Jackson.

We seek to continuously improve through programmes including annual target setting for environmental improvements, consistent with our longer term Te Ara Miraka sustainability program objectives.

We will be legally compliant with or exceed all relevant local body domestic and foreign environmental legislation.⁶

5.15 I have reviewed Miraka's proposed amendments in relation to the B5 Topic Area as set out below and consider that they both consistent with the NPSFM and the Vision and Strategy whilst importantly also moving PC1 further in line with the objectives of both documents than it is at present.

6. TOPIC AREA B5 – FRESHWATER MANAGEMENT UNITS (FMUS) AND SUB-CATCHMENTS

Sub-Catchments

6.1 As set out in the evidence of Ms Jude Addenbrooke, Miraka supports the focus on sub-catchments and FMUs but proposes a reconfiguration of the Freshwater Management/Sub-catchment Unit boundaries based on three main criteria of:

- (a) Hydrologic connectivity;
- (b) Biophysical homogeneity; and
- (c) Socio cultural identification.

6.2 Both Mr Gavin Sheath and Mr Grant Jackson comment on the benefits of these reconfigured Freshwater Management/Sub-Catchment Unit boundaries. Mr Jackson at paragraph 4.4(b) of his statement of evidence sets out some of the benefits of these new boundaries as the generation of more homogenous physical attributes and stronger community linkages, allowing for better practice change and sub-catchment planning. For example recognising these homogenous physical attributes in the setting of new boundaries supports the principle of equity where farmers in high rainfall areas are not penalised in the short term and through comparison of like for like, farms that are not employing good practice, can be identified and remedies employed.

6.3 In paragraphs 5.1 to 5.4 Mr Jackson sets out the Te Ara Miraka programme which has demonstrated the connections between practice change and community engagement. Mr Sheath at paragraph 4.8 of his statement sets out his experiences in the Rerewhakaaitu sub-catchments in which he found that successful change was achieved when farmers knew each other because sub-catchment boundaries aligned

⁶ <https://www.miraka.co.nz/environmental-policy.html>.

with community identity and they had time and processes to develop trust with other stakeholders.

FMUs

- 6.4 Whilst Miraka supports the principle of FMUs (as they are directed in the NPSFM) Ms Addenbrooke in her statement of evidence outlines how the currently proposed FMU boundaries are not at the most appropriate scale for setting freshwater objectives and limits and for freshwater accounting and management purposes.

Section 42A report

- 6.5 Section B5.2 of the s42A report addresses the spatial extent of the FMUs. Section 5.3 addresses the spatial extent of sub-catchments. The report addresses the submission on the spatial extent of both FMUs and sub-catchments independently but does not consider the option of a hybrid between the proposed FMUs and the sub-catchments. The recommendation on sub-catchment boundaries is that they are retained as notified. The analysis on the sub-catchment boundary identification confirms that communities of interest were not taken into account and that the boundaries are defined according to aerial photography and digital terrain modelling. Whilst this is a good starting point I consider that, to meet the objectives of the NPSFM, that baseline requires further definition to also reflect communities of interest and physical environmental characteristics such as rainfall and topography.

- 6.6 My planning review of the points in Mr Jackson and Ms Addenbrooke's evidence confirms that PC1 and V1 present an opportunity to set a new benchmark and methodology for establishing appropriate FMU boundaries in a way that achieves greater outcomes for both people and the environment. The setting of FMU and sub-catchment boundaries need not be mutually exclusive. The NPS FM enables this through its definition of FMUs:

"Freshwater management unit' is the water body, multiple water bodies or any part of a water body determined by the regional council as the appropriate spatial scale for setting freshwater objectives and limits and for freshwater accounting and management purposes.

- 6.7 The amendments to the boundaries sought by Miraka would be consistent with the NPSFM and in particular would fall within the definition of Freshwater Management Units. For clarity and consistency with the NPSFM the new Units could be referenced as Freshwater Management Units.

6.8 The large FMU boundaries comprise diverse physical and community characteristics. This means opportunities to focus on practice improvement and target areas for innovation and individuality are lost within these large unit areas. The advantages of a hybrid of both the Freshwater Management and Sub-catchment Units are that the new boundaries would achieve equity and efficiency through more:

- (a) Biophysical homogeneity in terms of equity and ability to identify farms where a lot of improvement can be made;⁷
- (b) Homogenous communities that are more likely to have common interests, greater ability to work together and self-regulate;
- (c) Homogenous catchments that allow for bespoke limits that reflect the characteristics of the catchments;
- (d) Deliberate and targeted practice change objectives and outcomes that reflect diversity in unit physical and community characteristics;
- (e) Baseline data collection that more directly relates to practice within the unit rather than being absorbed into a much larger unit;
- (f) Overall sense of more genuine community ownership of the catchment, leadership of and ability to make a tangible difference through their individual practice change actions;
- (g) Monitoring data that is more relevant to local community based catchment units. This would require the establishment of new monitoring sites within the new unit boundaries along with a baseline data collection programme;
- (h) Efficient Council reporting regime;⁸
- (i) Identification of priority contaminants;⁹ and
- (j) Number of catchment management groups.¹⁰

6.9 The alternative to Miraka's submission discussed in the section 42A report is to maintain the status quo sub-catchments and the proposed large FMU boundaries. I consider this approach will be less effective in achieving the outcomes sought than the alternative Freshwater Management/Sub-catchment Unit boundaries put forward in the Miraka submission for the reasons set out above.

⁷ Ibid para 5.3.

⁸ Addenbrooke para 4.6.

⁹ Ibid para 4.15.

¹⁰ Ibid para 4.16.

- 6.10 Finally, the section 42A Report at paragraphs 141 and 142 expresses a concern that a regulatory focus on sub-catchments is not well-aligned with the higher order documents and may result in insufficient focus on the river system as a whole and cumulative effects.
- 6.11 I agree that shifting the focus entirely to sub-catchments without an overall framework may result in the inferior outcomes anticipated by the Officers. However, I consider that the combined Freshwater Management/Sub-catchment Unit approach proposed by Miraka will ensure that the river system as a whole can still be considered. The combined Freshwater Management/Sub-catchment Units will be larger than the existing sub-catchments and will still allow for the river system as a whole to be managed.

Relief sought on FMUS and Sub-Catchments

- 6.12 I have set out below the amendments to PC1 and V1 necessary to achieve the FMU and sub-catchment boundary changes sought by Miraka as far as those changes relate to the B5 topic area only.

[pc1-8742] Reconfigure the FMU and Sub-catchment unit Boundaries

Reconfigure the FMU unit boundaries on Map 3.11.1 page 12 and replace the list of FMUs on Page 11 to reflect a hybrid (aggregation of sub-catchments) of the currently proposed FMUs and sub-catchment boundaries. Rename these new units as Freshwater Management/Sub-catchment Units.

- 6.13 I acknowledge that the name of these units could be changed. The term is used in the interim in this statement of evidence for clarity of origin.
- 6.14 Remove the sub-catchment boundary Map 3.11.2 on page 71 of the notified PC1 and replace all references to that map with a new aggregated Map.¹¹
- 6.15 There would be no consequential changes required to the intent of the FMU policy and rule framework as a result of these changes as the overarching purpose and principles of the FMUs would still apply. Some amendments would be required for consistent referencing purposes.
- 6.16 These amendments are consistent with the approach of some other major submitters, such as Federated Farmers.

¹¹ This could be a new Map 3.11.1 or 3.11.2.

- 6.17 The following amendments are consequential amendments to the objective and policy framework arising from aggregation and redefinition of the Freshwater Management/Sub-catchment Units.

[pc1-8767] Consequential Amendment to 3.11.2 Objective 1

- 6.18 Remove reference to sub-catchment and replace with FMU:

3.11.2 Objective 1: Long-term restoration and protection of water quality for each ~~sub-catchment and~~ Freshwater Management / Sub-catchment Unit.

[pc1-8775] Consequential Amendment to 3.11.2 Objective 3

3.11.2 Objective 3: Short term improvements in water quality in the first stage of restoration and protection of water quality for each ~~sub-catchment and~~ Freshwater Management and Sub-catchment Unit.

3.11.4.5 Freshwater Management and Sub-catchment Unit scale planning

Waikato Regional Council will work with others to develop Freshwater Management/~~s~~Sub-catchment Unit scale plans (where a catchment plan does not already exist) where it has been shown to be required. Freshwater Management/~~s~~Sub-catchment Unit scale planning will:

- a. *Identify the causes of current water quality decline, identify cost effective measures to bring about reductions in contaminant discharges, and co-ordinate the reductions required at a property, enterprise and Freshwater Management /~~s~~Sub-catchment Unit scale (including recommendations for funding where there is a public benefit identified)*
- c. *Assess and determine effective and efficient placement of constructed wetlands at a Freshwater Management /~~s~~ Sub-catchment Unit scale to improve water quality.*

[pc1-8775] Consequential Amendment to 3.11.4.7 Information Needs to support any future allocation

- 6.19 Remove reference to sub-catchment and replace with Freshwater Management/Sub-catchment Unit:

3.11.4.7 – Information needs to support any future allocation

Gather information and commission appropriate scientific research to inform any future framework for the allocation of diffuse discharges including:

- b. *(i) The quantum of contaminants that can be discharged at a Freshwater Management / ~~s~~Sub-catchment and Freshwater Management Unit ^ scale while meeting the Table 3.11-1 water quality attribute ^targets^.*
(iii) Tools for measuring or modelling discharges from individual properties, enterprises and Freshwater Management / ~~s~~Sub-catchments Units, and how this can be related to the Table 3.11-1 water quality attribute^ targets^.

3.11.4.10 – Accounting system and monitoring

Waikato Regional Council will establish and operate a publicly available accounting system and monitoring in each Freshwater Management / ~~s~~Sub-catchments Unit ^, including:

a.(ii) *Freshwater Management / Sub-catchments Units that are currently unrepresented in the existing monitoring network;*

3.11.4.11 – *Monitoring and evaluation of the implementation of Chapter 3.11*

Waikato Regional Council will:

b. *Research and identify methods to measure actions at a Freshwater Management /Sub-catchment Unit, property, and enterprise level, and their contribution to reductions in the discharge of contaminants.*

[pc1-8899] Consequential Amendment to 3.11.6 Tables

3.11.6 The full list of Tables in 3.11.6 will require subsequent amendments. This includes; Table 3.11.1 on pages 57 – 67; Table 3.11.2 on pages 68 - 70. The tables will need to correspond to the new Freshwater Management / Sub-catchment Units.

7. CONCLUSION

- 7.1 My planning analysis of the Miraka submission points and relief sought in relation to Topic Area B5 concludes that the amendments proposed are consistent with NPSFM and the Vision and Strategy and if incorporated into PC1 would align the PC1 planning framework closer to the objectives and policies of these documents than it is at present.

Kim Hardy

15 February 2019