BEFORE AN INDEPENDENT HEARING PANEL
OF THE WAIKATO REGIONAL COUNCIL

IN THE MATTER OF	the Resource Management Act 1991 (**RMA**)
AND	
IN THE MATTER OF	of the Proposed Waikato Regional Plan Change 1: Waikato and Waipā River Catchments

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STATEMENT OF EVIDENCE of JAMES BRENT WATSON SINCLAIR ON BEHALF OF WAIKATO REGIONAL COUNCIL AS SUBMITTER

Technical - Block 3

DATED 5 July 2019

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Introduction

1. My name is Brent Sinclair. I have been employed by the Waikato Regional Council ("Council") since 1997, and through that period have held various positions of technical and management responsibility within the regulatory part of Council. I currently hold the title of "Manager – Industry and Infrastructure" within the Resource Use Directorate at the Council, a position I have held since 2013. Prior to that time I held the title "Division Manager – Consented Sites" which I held since 2009.

2. I prepared a statement of evidence on Hearing Block 2. My qualifications and experience are set out in that statement.

3. I confirm that I am familiar with the Code of Conduct for Expert Witnesses as set out in the Environment Court Practice Note 2014 and have presented evidence before the Environment Court in relation to resource consent applications. I have read and agree to comply with the Code. Except where I state that I am relying upon the specified evidence or advice of another person, my evidence is 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 in my evidence.

4. In my evidence to Block 2 of the hearing, I commented on the implementation issues that would likely arise from the Plan requirements regarding the timing of the need for farmers to obtain consent (refer paragraphs 45-57 of my Block 2 evidence). This evidence addresses that matter.

Phasing of Consents

5. To recap, the proposed rules currently require consents to be sought in three tranches between 2021 and 2026, although the s42A report notes the practical difficulties of specifying a "start date" for rules, given the legal effect of s20A on their enforceability.

6. In addition to the effects of s20A, implementation considerations are complicated by other current uncertainties including rule activity status, whether a permitted activity pathway will remain for those under an industry scheme and the exact makeup of the three prioritised tranches. Due to all of these uncertainties, three possible implementation "scenarios" were identified (and are described in Dr McLay's Block 2 evidence) for the purpose of assessing consequences for implementation.

7. In my previous evidence I expressed the following concerns:
    a. Whether the industry would have the capacity to provide the required technical support in the form of certified Farm Environment Planners and certified Nutrient Management Advisors, to farmers within the timeframes specified. (In this regard, I note that a number of sector industry witnesses have given evidence to this hearing expressing the same concerns);
    b. Whether, even on the basis of the most favourable scenario (Scenario 1: the "as notified" rules), Council could realistically process the numbers of applications coming in, within the statutory timeframes required.

8. I also note that while b) above focuses specifically on consenting required under PC1, the reality is that the consent process itself is just one, albeit important, component of a significantly larger process in which individual farmers will need to engage. A critical part of successful implementation will be prior engagement with farmers to explain the requirements, respond to their enquiries and generally assist them and their sector representatives, to understand and meet the Plan's requirements. My experience of recent comparable processes (e.g. Variation 6) suggests that this will take considerable time.

9. As a result, I invited the Panel to consider options to more evenly "spread" the timing for lodgement of these applications. Now, to assist the Panel in this consideration, I provide further information and commentary on what this might look like in practice. In this regard, there are two fundamental aspects to consider; (1) the total window of time within which to process all consents; and (2) how those consents are best phased within that window.

10. While my evidence is particularly focused on consenting, as I note above, consenting is just one component of the process that farmers will need to engage in. In general terms, this process will involve the following:
    a. Registering
    b. Engaging with the Council/getting familiar with the requirements of PC1;
    c. Working with a CMNA to obtain an NRP (if the latter remains a Plan requirement)
    d. Working with a CFEP to prepare an FEP
    e. Lodging consent application (which must include the FEP)
    f. Complying with their consent/FEP

g. Monitoring/audit of the consent/FEP

11. Returning to the first of the matters identified in paragraph 7, it is useful to consider the window provided for consenting in the Plan as notified, and the assumptions underlying it. In the Plan as notified, the window available for consenting all who required consent under the Plan, was approximately 6 years (1/1/2020 to 1/1/2026), albeit subject to s20A. Variation 1 to the Plan amended these dates to reflect the delay caused by the Variation process. It moved the window "start" date back 21 months, but it did not shift the end date, with a resulting reduction in the window available, to a little over 4 years (1/9/2021 to 1/1/2026). At that time, the rules anticipated a permitted activity rule for those under a certified industry scheme. On that basis, it was estimated that approximately 2500 farmers would require consent. For the original six year window provided when PPC1 was first notified that averaged out at a little over 400 consents per year, and over the amended window that resulted from Variation 1, an average of around 600 consents per year.

12. Through the hearing process it is now evident that there may be significant changes to the rules regime in the Plan, although as noted above, exactly how it may change is uncertain. However, it does appear likely that the number of properties requiring consent will increase significantly (for example, if the permitted rule pathway for those in an industry scheme is dispensed with), and the number requiring consent earlier rather than later in the process, will also increase (due to the elevation of 7 sub-catchments to priority 1 status).

13. I gave evidence at the Block 2 hearing that, based on certain stated assumptions including a consenting "end date" of 2026, implementing Scenario 1 (which, based on the "as notified" rules, assumed the lowest number of consents required of all scenarios) would be difficult. I said that *"the ability to recruit, and train the required people (irrespective of whether those are staff employed by the Regional Council or by contractors) …is likely to be a considerable challenge, and quite likely not possible at all."* I stand by that statement. If the Panel's decisions reflect Scenarios 2 or 3 (or some hybrid combination), then implementation challenges are greater still.

14. Fundamentally, there needs to be a sufficient period of time provided to enable at least 2500 (approx.) farms, and possibly up to 5700, to prepare an FEP and apply for consent, and for the Council to effectively process those consents. Being able to achieve this will necessitate

significant time and resources to develop, test and prepare the internal systems, processes and infrastructure to enable it. This work can be developed in part, but not finalised, until Council has certainty in respect of the regulatory requirements. Effective implementation will also not be possible without significant farmer engagement. This has already begun but I expect that it will need to continue for the life of the Plan.

15. Furthermore, perhaps the most critical success factor is the availability of sufficient external expertise (in the form of CFEPs and CNMAs) to assist farmers with NRP and FEP requirements. For example, I understand the Panel has heard evidence from NZIPIM that the estimated time to prepare a FEP is 4 days. Providing sufficient time for robust FEP's to be prepared for lodgement with a consent application will be critical to successful implementation.

16. In my opinion, resource consent requirements should be spread across the period of the Plan itself (i.e. up to 10 years) in order to maximise the opportunity for manageable and effective implementation. A possible 5700 consents required over 10 years equates to approximately 570 per year. The preparation for, granting and regulatory oversight of which will require a significant increase in Council's current resourcing in this area. Phasing across this period of time will also have clear effectiveness benefits both in terms of Council's ability and capacity to undertake effective prior engagement with farmers.

17. I am also acutely aware that the Waikato/Waipa Catchment represents only part of the Waikato Region and that whatever implementation resource is required for PPC1 is additional to the resources required to implement requirements relating to central Government's water quality programme, likely to be promulgated in the next 12 months.

18. I attach as Appendix 1 to my evidence, tables showing a proposed method for spreading the consent load in a way which, in my opinion, is implementable. Whilst the average number of consents over the ten year period is 570, what can be seen from Appendix 1 is that during the five year period required to complete the first Tranche, the average number of consents per year will be 677. Processing this number of consents within statutory timeframes will still pose major challenges, as I discussed in my previous evidence, but working closely with the various sectors I see the chances of success are much improved.

19. The numbers are derived from the Council's geospatial rating data for properties greater than 20 hectares and where land use is identified as farming. The rating data is not entirely appropriate for this purpose (e.g. land use data may not accurately reflect current land use) however the farm numbers were cross-referenced with various dairy sector submission evidence, adjusted accordingly and are considered broadly accurate for present purposes.

20. The approach is based on the same three "tranches" established by PPC1 but spreads them out (in the same order) over a 10 year period. Because the date that rules will come into effect is uncertain at this stage, my recommendation is that a "Year 1-10" approach is adopted. The tranches are:

    a. Years 1-5: Tranche 1
       Priority 1 sub-catchments + commercial vegetable production + 75%ile N emitters

    b. Years 6-8: Tranche 2
       Priority 2 sub-catchments

    c. Years 9-10: Tranche 3
       Priority 3 sub-catchments

    The Tables also show the numbers as modified by the elevation to the first tranche of the 7 sub-catchments as recommended in the s42A report (refer paragraph 645 of s42A report, Block 1).

21. The differing periods of time for successive tranches reflect the numbers of farms that fall within each tranche. For example, more than half of all farms fall within Tranche 1.

22. The breakdown of each tranche is based on a combination of whole sub-catchments and/or sectors these being the most likely bases for prior engagement with farmers. Each tranche is then subdivided into annual sub-tranches. Phasing priority of sub-tranches has been broadly determined by three criteria:

    a. 75%ile N emitters and CVP before others
    b. Higher sub-catchments before lower sub-catchments; and
    c. Dairy before non-dairy.

Based on the above, the consents within a tranche can be reasonably evenly spread across the tranche periods.

23. The phasing proposed assumes that Tranche 1 will include the top quartile of N emitters (as was provided for by PC1 as notified). I am aware that there is currently debate as to the merits and practicability of the 75%ile concept in the Plan. I would note that the outcome of this debate is potentially relevant to implementation as well. Currently, the Plan requires all farmers who require an NRP, to produce and supply it to the Council by 30 November 2020 (the same deadline as for registration). The main reason for all NRPs to be supplied at this relatively early stage in the Plan is to enable calculation of FMU-based 75%ile N loss values. The top quartile farmers are specified in the as notified Plan, as being part of the first tranche of land-owners to require consent. If the 75%ile concept is retained, and the priority for consenting them remains, then it is imperative that adequate time is built into the rules regime to ensure that NRPs can be produced, the top quartile identified, and that this group of farmers (who are expected to be almost exclusively dairy) can engage with the Council and the external technical experts as appropriate to enable them to lodge applications when they need to. Currently, the plan as notified intended to provide a period of 9 months between the end of the NRP window (30/11/2020) and the date on which rule 3.11.5.4 is stated to take effect (1/9/2021). (Section 20A has the effect of allowing an additional 6 month period for farmers who meet certain criteria relating to existing use). It is important that the period intended to be provided in the Plan for implementing the 75%ile requirement, is accommodated within the timing of NRPs and consents in the Plan.

24. If the 75%ile concept is not retained in the Plan, then there is arguably little purpose in farmers having to produce their NRP until they are required to obtain consent (although there may be practical merit in doing so on the basis that the longer it is left, the harder it may be to produce the records necessary to support the Overseer assessment required). From an implementation perspective, it would be simpler to tie the submission of NRP to the dates that apply for lodgement of resource consent. Removal of the 75%ile concept would also significantly affect the phasing as shown in Appendix 1. Currently, we have assumed that the top quartile emitters will be the highest priority for consenting. Removal of this category means that those emitters would simply be reallocated back to the relevant sector or sub-catchment category, and some rearrangement of these within the tranche period would then be appropriate to ensure each sub-tranche has reasonably similar numbers.

Appendix One – An approach to phasing of consent requirements

The two tables below give a breakdown of the three "tranches" of consents required under PC1, spread over a 10 year period. Both tables assume that (a) the "75%ile" concept will be retained and (b) the permitted activity pathway for Industry Schemes will be dropped. The two tables differ in that Table 1 includes the elevation of 7 sub-catchments to priority 1 catchment status (as per the s42A report recommendation), and Table 2 does not.

Table 1

P1	**Year**	**Average #/yr**	**No of farms**
75th Percentile Farms	1	677	638
Upper Waikato + Central + CVP	2		691
Waipa	3		710
Lower Waikato West (sub-catchment numbers 3, 6, 11, 16, 18, 19)	4		614
Lower Waikato East (sub-catchment numbers 2, 8, 10, 12, 13, 14, 15, 17, 20)	5		731
			3384
P2	**Year**	**Average #/yr**	**No of farms**
Upper Waikato + Central + Lower Waikato	6	418	437
Waipa Dairy	7		387
Waipa Non-Dairy	8		429
			1254
P3	**Year**	**Average #/yr**	**No of farms**
Upper Waikato + Waipa	9	520	534
Lower Waikato + Central	10		507
			1041
		Total	**5679**

Table 2

P1	Year	Average #/yr	No of farms
75th Percentile Farms	1	552	638
Upper Waikato + Central + CVP	2		534
Waipa	3		536
Lower Waikato West (sub-catchment numbers 3, 11, 16, 18)	4		357
Lower Waikato East (sub-catchment numbers 2, 8, 10, 12, 13, 14, 17, 20)	5		696
			2761

P2	Year	Average #/yr	No of farms
Upper Waikato + Lower Waikato	6	574	708
Waipa Dairy	7		513
Central + Waipa Non-Dairy	8		500
			1721

P3	Year	Average #/yr	No of farms
Upper Waikato + Waipa	9	599	691
Lower Waikato + Central	10		507
			1198
		Total	**5679**