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 Hearing 3**

Statement of Primary Evidence of **Bridget Robson**
for
CNI Iwi Holdings Limited (CNIIHL)
Submitter number 74026

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Qualifications and experience

1. My name is Christine Bridget Robson. I specialise in RMA environmental management, with particular interest in the effectiveness of the entire policy cycle, from the science supporting policy development to compliance with that policy.

2. I hold a Bachelor of Agricultural Science and a Master of Philosophy in Resource and Environmental Planning, both from Massey University. My 35 years of work experience spans government (central and local), industry, and providing technical advice to Iwi land owners. My work most relevant to this plan includes Land Use Capability assessment, RMA policy development and review of both Regional Policy Statements and regional plans. My experience ranges from the "ground zero" decisions on acquiring raw science for policy development, through policy design and policy implementation. An eight-year role developing and managing the Bay of Plenty Regional Council (BOPRC) geothermal programme required familiarity with conceptual and reservoir modelling.

3. As well as roles in regional councils I have held environmental advocacy and implementation roles in the forestry and energy sectors. I managed environmental operations for the 330,000ha Carter Holt Harvey Forests' estate, which required interaction with planning documents for 39 regional and district councils. I ran hydro and geothermal environmental compliance programmes for what is now Mercury Energy Limited. I was principal policy advisor to MPI for the development of the National Environmental Standards for Plantation Forestry.[1] I provided technical advice to Te Arawa River Iwi Trust for the latter part of the Waikato Healthy Rivers Collaborative Stakeholder Group (CSG) process, which I observed, as well as input to Te Rōpū Hautū.

4. On behalf of CNIIHL I was the expert planner in the Environment Court proceedings for Proposed Plan Change 10 (PPC10) to the Bay of Plenty Regional Natural Resources Plan. PPC10 proposes a nitrogen allocation and trading regime for land use in the Lake Rotorua groundwater catchment.

5. In preparing this evidence I have reviewed the plan change, supporting reports and relevant background documents and technical reports, including:
    (a) Written material from the CSG process
    (b) Waikato Regional Council's proposed Plan Change 1 and Variation 1;
    (c) Waikato Regional Council's s32 report;
    (d) Waikato Regional Council's s42A report;
    (e) Te Ture Whaimana, the Vision and Strategy for the Waikato River;
    (f) CNIIHL submission on PC1 and Variation.

6. Although this is a Council Hearing, I have read the December 2014 Environment Court Practice Note - Code of Conduct for Expert Witnesses. I have complied with that Code when preparing my written statement of evidence and I agree to comply with it when I give any oral presentation.

Summary of Evidence

7. I provide analysis on the appropriateness of Officers' proposed responses on PC1 issues relevant to Hearing 3 for policy and planning, and structure my statement accordingly. This evidence covers an analysis of the s42A response to policy 7, Farm Environment Plans (FEP), and "miscellaneous" as it applies to methods.

8. The s42A report recommends the removal of Policy 7, which gave policy guidance on the relevant principles for future development of an allocation approach. I consider that removal of Policy 7 is not appropriate, particularly given the status of this plan change as being only one step towards meeting Te Ture Whaimana. Although this plan cannot commit future plans to a specific approach it can identify the parameters that should inform such an approach, particularly as these were an output from the CSG process. Indirectly it also provides guidance for the PC1 rule design. To avoid merely solidifying existing use requires that the consent design for PC1 actively considers principles that give direction on what constitutes appropriate land use.

9. I conclude that the use of Farm Environment Plans could result in a significant improvement to water quality, as sought by Te Ture Whaimana. Although I support the concept of Farm Environment Plans, the redrafting proposed in the s42A report is insufficient to ensure that plans will result in actions for which reliable compliance assessment is possible. Schedule 1 is insufficiently supported by a "plan, do, check, review" process and it is not clear whether there is sufficient independence between various elements of that process. I consider that refinements are required before a consistent performance for similar problems at different farms would be a likely outcome. Also the mechanisms used to authorise the land use and associated discharges must be designed to avoid locking in place a de facto allocation based on present use.

CNIIHL's interest in Plan Change 1

10. CNI Iwi Holdings Limited (CNIIHL) land holding is 34,000 Hectares, returned to the CNI Iwi collective in 2008[1]. The sub catchments that overlap with this land are 56, 65, 72, 73, and 74. See Figure 1.

11. Crown Forest Licences encumber this land. These progressively terminate over 35 years ending in 2044. The PPC1 design will constrain future land use to forestry, despite parts of this land being suitable for other uses.

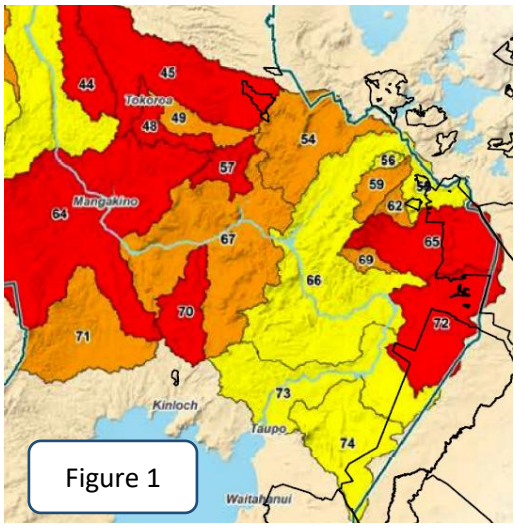

Figure 1

Hearing Part 3 – Parts C7-C9: Sub catchment planning, Farm Environment Plans and miscellaneous

Policy framework

12. The primary mechanism Plan Change 1 uses to require improved diffuse discharge management at an individual property level is tailored farm environmental plans. It also seeks a "hold the line" approach at FMU, sub catchment and enterprise level followed by "sinking lid" for N leach management.

13. Policy 7 sets out broad considerations for allocation. Its revision would revise elements of the rules. i.e. the design of this policy interacts with the results of hearing 2 rather than being consequential to hearing 2.

Policy 7

14. Because PC1 is the first stage of what has been described as potentially an 80 year process to meet the intent of Te Ture Whaimana, those developing the PC1 approach thought it prudent that it gave some sense of how that water quality improvement regime was intended to play out over multiple plan terms. **Policy 7** and the complimentary test in the background and explanation was included to provide a sense of that policy trajectory, and to require actions to support the next phase. The intent was to use the first ten years (PC1) to gather data. This would enable an allocation system to be introduced (if it was considered necessary at that stage) at the subsequent plan change. This "direction for the future" was included because it became evident that for PC1 there was insufficient information to support an allocation approach – or even to form a comprehensive understanding of per-property risks. If no provision for nor red flag was raised in PC1 that information is required to implement an allocation approach it would mean that the next plan phase would strike exactly the same problem as this one had. I.e. Policy 7 was an attempt to be prudential, regarding having both sufficient information to support further actions that would lead to water quality improvements

[1] Deed of Settlement of the historical claims of CNI (Central North Island) Forests Iwi Collective to the Central North Island Forests Land 25 June 2008

necessary to continue effect of Te Ture Whaimana and in setting out the nature of the approach to allocation.

15. The s42A recommendation to remove Policy 7 provides a number of reasons, none of which address the 80 year timeframe of Te Ture Whaimana and how to create some sense of continuity from one plan change to the next, for that long process. It backgrounds Policy 7 with:

> *439…Policy 7 requires preparation for further diffuse discharge reductions and any future property or enterprise-level allocation of diffuse discharges of N, P, sediment and microbial pathogens that will be required by subsequent regional plans, by implementing the policies and methods in PC1. The policy focuses on the collection of information and research* ***to prepare for these future reductions****.*

16. The nature of any future allocation regime was developed to a principles level at CSG. It was clear that to embed the status quo would be inequitable, unsustainable and inappropriate. Therefore another function of policy 7 was to signal what would be the direction required to reduce that inequity and unsustainability, in the form of principles:

> *440. Policy 7 also sets out several principles that should be considered for any future allocation mechanism. These principles include the concept of land suitability, allowance for flexibility of development of tangata whenua ancestral land, minimising social disruption and costs and the use of new data and knowledge which may be gathered in future.*

17. Concerns raised in the s42A included that predicting what will be "a suitable[2]" or "the best[3]" allocation framework would be challenging. The s42A advises that a range of issues have arisen since PC1's allocation mechanism was developed that would suggest that the policy and technical framework in a further 10 years or more may be quite different. My observation of the CSG process was that people were well alive to the issues with allocation mechanisms prior to notification, but a dogged effort to require that one be at least signalled in PC1 was a core tenet of the WRC planning process at the time. That was the context for including Policy 7. Its intent was to signal that *should there be* an allocation system in future, its principles were that it be firmly steered away from grandparenting and towards matching land use with land capability. The way the s42A has teased out the nature of the support or opposition to Policy 7 does not assist in understanding if, should there be an allocation regime in future, whether there is opposition to a natural capital approach. There is no direct analysis on yes or no to allocation per se and some submitters would be opposing any form of allocation under any circumstances. There is no specific analysis on support for the different allocation approaches – grandparenting or natural capital. The analysis on the information gathering aspect of the policy, which sets out a methodology, are conflated with analysis on completely different aspects of the principles that the policy espouses.

18. The s42A used these headings to group the submissions for their analysis:
    - *Uncertainty for the future and economic implications;*

      This segment discusses submissions on the use of allocation in general and its unknown effects, the unknowns about future land uses allowed on certain land use

[2] Paragraph 479
[3] Paragraph 482

classes (thus directly a natural capital issue), sinking lid for nitrogen discharge, the effect of the timing of introducing allocation (near future or mid future) and (indirectly) how to preserve position in the face of farming to an N limit.

- *Future allocation based on a grandparenting approach and the use of Overseer;*
  This segment conflates three issues. Is grandparenting an appropriate regime? Is the measurement tool up to the job? And is the development of a Nitrogen Reference Point going to morph inevitably into an allocation? These are separate concerns. One is the principle of the regime, another is the methodology. The third is a suspicion that the mere act of measuring will lock in an approach. I would have expected the analysis to clearly distinguish between them. Is the objection to the principle of allocating? Is it to using grandparenting to allocate, but another regime would be acceptable? Is it that there are no viable tools to contemplate allocation? Is it that codifying existing performance will confirm an unwelcome approach? These are very different concerns. Depending on the prevailing view, it could be expected that they would lead to recommendations for changes to policy 7 that span a range of: reject, because reject allocation; modify to reject grandparenting; modify to reject the notion that measuring will confirm an allocation; or reject or modify because no tools exist to implement.

- *'Everyone should be treated the same' (Māori land);*
  The constraints on land use change that support a sinking lid approach to nutrient discharge take no account of land that is used at much lower intensity than its capability. Māori land and settlement land is overrepresented in this category. This point is also about formal or informal grandparenting, as it is only under a grandparenting regime that some special provision for land used at low intensity is required. It is interesting that submitters describe grandparenting - whereby land used well under its assimilative capacity is "treated the same" as land that is unquestionably used well beyond its assimilative capacity. It shows a distinct lack of insight to regard measures to level that playing field as being unfair.

- *Appropriateness of the provision as a policy.*
  This segment also covers more than one distinct issue. One is the appropriateness of a policy guiding action beyond the term of this plan change. The other is whether a component of this policy is better described as a method. As above, dealing with these separately would have provided more useful insights into how Policy 7 could be recrafted to overcome concerns about its drafting.

19. Overall the nature of the s42A analysis means it is not easy to discern the differences between global opposition to allocation, more nuanced positions opposing different types of allocation, concerns about the methodology (information gathering), those on extending the direction of the plan beyond its obvious term, and providing for specific groups who have been disadvantaged by the timing of land "development" to date.

20. I consider that modifications to Policy 7 are preferable to its deletion. The range of the concerns raised suggest that perhaps too many elements were packed into one policy and it may be appropriate to create more than one policy instrument.

21. One modification to the policy could be to more clearly define the "if, then" direction regarding allocation: *if* allocation is used, *then* the policy direction will use natural capital principles.

22. Another could be to put methodological issues for allocation into a method. That would separate the methodology for arriving at nitrogen reference points and the tool(s) used to do so from the policy identifying that allocation is a possible future way of dealing with diffuse source N contamination. The s42A authors' preference for no methods would make this change more difficult, unless their recommendations regarding the removal of methods are not accepted. I discuss the advisability of removing the methods at paragraphs 27 - 30.

23. The s42A advises that:

> *481. …any system that **allocates property level discharge rights** will need to be **robustly reviewed** at the time of its development in recognition of the diversity of views on this topic from the community.*
>
> *482. Policy 7 and the associated implementation method are at best a statement of intent. Any future planning regime will be required to **reassess a property level allocation mechanism,***

24. It becomes clear that the likely structure of an allocation regime would have the perverse effect of making an allocation of the discharge of contaminants into an asset. This would drive a range of undesirable behaviour that is at odds with contaminant reduction, some of which we are already hearing about, such as farmers seeking to maximise their Nitrogen Reference Point. Because of this perversity I consider that the rule structure in PC1 must be revised to avoid any sense that the ability to discharge contaminants is a right explicitly authorised through a PC1 consent. Instead the permitted activity status and any consents must be designed to authorise the use of land provided certain land management conditions are met, and the s15 obligations are regarded as being met as a consequence. I therefore support the inclusion of Rule 3.11.5.8.

25. If in PC1 consents were granted for a specific discharge or for the full discharge associated with a particular land use, then allocation will have occurred in the absence of a formal allocation framework. If that happens, there will be little or no capacity to reassess a property level allocation mechanism at a later date, because large proportions of the allocation will already be tied up in consents. That will not be a problem of 'pre-judgement" – a concern raised in the s42A:

> *482…Any future planning regime will be required to reassess a property level allocation mechanism, if indeed one is appropriate, **without pre-judgement as to the best approach**.*

It will be a problem of concreting the status quo land use.

26. Whether or not a formal allocation process is used, some attention needs to be paid to the process by which present land use will make a transition to appropriate land use, with a clear indication of how land use intensity will be reduced when it is clearly beyond the assimilative capacity of the land. Ideally this would be directly addressed through land use intensity rules in this plan change.

Removal of methods

27. As with the analysis of policy 7 in the s42A I consider that the analysis of concerns about the methods conflates several concerns and thus overreacts to these by seeking to delete all the methods.

28. The S42A identifies that:

    330. …implementation methods support the regulatory actions, or identify some of the non-regulatory actions that will be undertaken.

29. This would appear to provide a beneficial function, articulating the supporting actions necessary for the regulatory functions to work as intended.

    331. Some appear to be what could be seen as "business as usual" for the WRC. Examples of this include obtaining appropriate levels of funding, undertaking monitoring and complying with statutory requirements of various legislation or regulations. Other elements of the implementation methods are core issues subject to decision-making by the Hearing Panel on other policies and rules. Examples of this are issues related to scale of FMUs and monitoring requirements, the role of sub-catchment planning, the place for Certified Industry Schemes and whether or not PC1 provides stronger guidance on the management of lakes and wetlands.

30. At the hearing for Block 2 I provided photographs and council staff information on the non-compliance with several of the existing plan's rules. It was evident from the long run >20% non-compliance with high risk rules (effluent pond capacity and performance) that something is missing from the structures that should be supporting Council in implementing this plan successfully. If the worst effect of having "business as usual" methods in PC1 is that they end up duplicating support already provided in the Long Term Plan budget or other statutory vehicles, it would seem to be a small price to pay. If on the other hand the absence of such methods means that council staff have no platform from which to seek a budget for various actions required to give effect to the plan, it would appear to pose a significant risk. Therefore my answer to the officers' question in paragraph 333[4] of the s42a is that the risk of their absence outweighs concerns about the value of their presence. The costs associated with making the necessary adjustments to these methods, in the context of the cost of this plan change as a whole, to my mind does not justify abandoning them entirely.

Farm Environment Plans

31. The plan rules require each property to develop a Farm Environment Plan (FEP). As noted in paragraph 25 above I consider that it is important that these rules are section 9 land use rules and that they do not explicitly authorise the discharge of contaminants. This is to avoid any de facto allocation. Although this has been addressed in part through Rule 3.11.5.8 I still think that this will require alteration of the design of the farm environment plan rules, as at the moment they appear to be at risk of authorising specific discharges. In my opinion the rule

[4] *333. Overall, Officers question the value of these implementation methods and whether they will remain relevant and helpful through the 10 year plus life of the plan change. As is noted below, while specific wording changes could improve the certainty of the various implementation methods, most are reliant on decisions made on the wider plan change, and these implementation methods will need to be adjusted in order to be consistent. Overall, Officers recommend that the implementation methods, in their entirety, be deleted.*

design required to avoid this risk would authorise land use (section 9) on the basis of a series of conditions consistent with continuous reductions in contaminant release, expressed as land use actions, not as specific numeric discharge limits. Any use of section 15 based rules should be limited to these being a contingent authorisation based on the conditions relating to the land use actions of the primary land use consent. The rule and consent construction described above are required to avoid the securing of any allocation prior to a conscious allocation process being developed.

32. The prospect of legal challenges to actions required on land when the subject of the rule is the effect of land activities on water would be addressed by ensuring that actions have a proven strong correlation between the two. E.g. riparian setback distances would be decided on the basis of their efficacy in reducing contaminant discharges; striking the balance between cost and efficacy.

33. The FEP rules set out a list of topics that a property owner must consider how they can improve practice. This approach is appropriate for some actions that require a completely tailor-made approach on site, but they are not necessary or appropriate for all the land use actions that are known to reduce contaminant discharge. In that regard the FEP rule suite is not adequately supported by other generic rules that require sound practice, such as the rules in the present plan regarding effluent ponds, effluent application and feed pads.

34. Land management practices that are known to have a strong correlation to water quality effects can be expressed as RMA section 9 rules with low risk of legal challenge as to their efficiency, effectiveness and appropriateness if the rules are backed by information on how the rule trigger relates to the water quality objective, what data informs it, and what the confidence is in that data. E.g. the science information on appropriate riparian setbacks in a pasture landscape.

35. Although I support the concept of Farm Environment Plans, the redrafting proposed in the s42A report is insufficient to ensure that plans will result in actions for which reliable compliance assessment is possible. Schedule 1 is insufficiently supported by a “plan, do, check, review” process and it is not clear whether there is sufficient independence between various elements of that process. I consider that refinements are required to improve the likelihood of a consistent performance for similar problems at different farms would occur.

Conclusion

36. I consider that:
    a. to retain the momentum towards the objectives of Te Ture Whaimana requires that the core content of Policy 7 be retained. That being: a need to gather information on contaminant discharges; and a need to make clear the principles that are relevant, should an allocation approach be used. The suggested changes to the text in Annex A are to support those outcomes;

    b. the benefits of including non-regulatory methods outweighs the disadvantages associated with modifying them to be consistent with changes to objectives and policies as a result of the schedule 1 process, and that they should be retained;

c. the rules supporting improved land use performance should be RMA section 9 based to avoid any accidental allocation prior to a formal allocation regime being developed; and

d. Additional refinement to the FEPs is required to ensure that they have an adequate framework for consistent, clear, enforceable provisions.

Annex A - changes sought to PPC1 provisions, further to those in the s42A report

Background and explanation

Co-management of the Waikato and Waipa Rivers

1. *Reinstate all references to intended direction associated with Policy 7*

- Preparing for future requirements on what can be undertaken on the land, with limits^ ensuring that the management of land use and activities is closely aligned with the biophysical capabilities of the land, the spatial location, and the likely effects of discharges on the lakes, rivers and wetlands in the catchment.[2]

These constraints on land use change are interim, until a future plan change introduces a second stage, where further reductions in discharges of sediment, nutrients and microbial pathogens from point sources and activity on the land will be required.
This second stage will focus on land suitability and how land use impacts on water quality, based on the type of land and the sensitivity of the receiving water. Methods in Chapter 3.11 include the research and information to be developed to support this.[6]

2. *Remove text that has the effect of locking in a grandparented discharge*

- ~~a property scale nitrogen reference point to be established by modelling current nutrient losses from each property, with no property being allowed to increase losses exceed its reference point[4] in the future and higher dischargers being required to reduce their nutrient losses~~

3. *Reinstate Policy 7, but split into a policy and a method, and identify that the allocation methodology described in the policy is contingent on allocation being chosen as an approach*

Policy 7: Preparing for ~~allocation in the~~ future reductions/Te Kaupapa Here 7: Kia takatū ki ngā tohanga hei ngā tau e heke mai ana
Prepare for further diffuse discharge reductions and any future property ~~or enterprise~~-level ~~allocation~~ reduction of diffuse discharges of nitrogen, phosphorus, sediment and microbial pathogens that ~~will~~ may be required by subsequent regional plans, by implementing the policies and methods in this chapter.

Should ~~Any future~~ allocation be a future approach, ~~should~~ consider the following principles for an allocation regime:

a. Land suitability which reflects:
   i. The biophysical properties of the land that determine productive potential and susceptibility to contaminant loss (e.g. slope, soil type, drainage class, and geology); and
   ii. the local climate regime that determines productive potential and the likelihood of water storage and runoff patterns (e.g. frost, rainfall and its seasonal distribution); and
   iii. The natural capacity of the landscape to attenuate contaminant loss; and
   iv. the Objective 1 water quality limits^ related to nitrogen, phosphorus, microbial pathogens and sediment for the surface waters that the land is hydrologically connected to; and
   v. the desired values^ in those receiving waters (ecological and human health) and how they are influenced by the four contaminants.

      For the avoidance of doubt, land suitability criteria exclude current land use and current water quality, the moderating effects of potential mitigations, and non-biophysical criteria (economic, social and cultural). Instead these factors will be of importance in analysing the implications of a completed land suitability classification.

b. ~~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.

Method # from Policy 7: Preparing for future reductions

~~To ensure this occurs, c~~Collect information and undertake research to support the preparation for future discharge reductions ~~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'.