

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

**OPENING LEGAL SUBMISSIONS FOR BLOCK 1
ON BEHALF OF MIRAKA LIMITED**

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

MAY IT PLEASE THE COMMISSIONERS

1. INTRODUCTION

- 1.1 Miraka Limited (**Miraka**) is a Māori-owned dairy processing and exporting company with over 100 milk suppliers, largely located in the Upper Waikato catchment.¹ Miraka produces 35,000 tonnes of whole milk powder and 6 million litres of milk from its factory. All of its products are exported and currently generate over \$200 million revenue annually.²
- 1.2 Miraka's unique perspective on Plan Change 1 is that it is a commercially successful dairy operation whose central ethos is based on the cultural values of its Māori owners. Kaitiakitanga and tikanga provide the foundation of the company's values. They underpin Miraka's relationship with the natural world and its view of intergenerational wellbeing. Protection of the environment is of paramount importance to Miraka as it aligns with its vision of "nurturing our world."³
- 1.3 Miraka lodged submissions and further submissions on Plan Change 1 and Variation 1⁴ (**PC1**) and has filed evidence (including expert evidence) on Block 1. It will be filing further evidence and appearing in relation to the next two hearing blocks.
- 1.4 Miraka supports the aims and aspirations of PC1, including the 80 year timeframe to achieve the objectives and the staging of implementation during the first ten years. It seeks that PC1 is implemented in a fair and equitable manner, to ensure that all sectors of the farming and wider community contribute to improving water quality and that the socio-economic impacts of those contributions are minimised where possible.⁵
- 1.5 In relation to the Block 1 topics, Miraka's principal focus is on Freshwater Management Units and sub-catchments, but it has an interest in the other provisions discussed in Block 1 and is keeping a watching brief on any changes to those.⁶
- 1.6 Overall, Miraka generally supports the policies, methods and rules by which PC1 implements its objectives, particularly the use of Farm Environment Plans and Certified Industry Schemes. It opposes the current approach to nitrogen and any pre-emptive allocation of contaminants. The management of all four contaminants should be addressed in the same way, primarily in Stage 1 through Good Management Practice

¹ Evidence of Richard Wyeth, paragraph 5.2.

² Ibid, paragraph 5.1.

³ Ibid, paragraph 4.1-4.3.

⁴ Although for Variation 1 Miraka only lodged further submissions not primary submissions.

⁵ Evidence of Richard Wyeth, paragraph 6.1 and 6.4, and Evidence of Grant Jackson, paragraph 4.2.

⁶ Miraka's original submission supported with amendment the background and explanation, the values and uses and all the Objectives.

(GMP), and Miraka seeks enhanced sub-catchment planning and management.⁷ These issues will be addressed in more detail in later hearing blocks but Miraka's position has been signalled in the evidence for Block 1.

- 1.7 Miraka's view is that the inevitable impacts of changes to improve water quality should be equitably shared by all enterprises. A key driver of change is a consistent approach to practice change.⁸ Only with a strong emphasis on practice change (at farm and community level) can the challenging future targets be met. Miraka therefore takes the opportunity in Block 1 to outline the principles of practice change.
- 1.8 Miraka's own unique farm management system, Te Ara Miraka, provides a real world example of the opportunities and benefits available in both environmental and economic terms of incentivising and implementing practice change and GMP in the dairying context.

Evidence

- 1.9 Miraka has provided the following evidence in support of its submissions:
- (a) Richard Wyeth, Chief Executive of Miraka. Mr Wyeth outlines Miraka's values, its operations and its overall interest in PC1;
 - (b) Grant Jackson, General Manager, Milk Supply for Miraka. Mr Jackson describes in greater detail Miraka's areas of support and changes sought for PC1 and the Te Ara Miraka programme;
 - (c) Dr Mark Paine, Independent Consultant. Dr Paine gives expert evidence on practice change, how it can best occur on a farm, and practice change in light of short term targets;
 - (d) Dr Gavin Sheath, Agricultural Systems Consultant and advisor to Miraka. Dr Sheath describes amendments sought to PC1 to incorporate practice change principles;
 - (e) Jude Addenbrooke, Environmental Management Consultant. Ms Addenbrooke provides expert evidence on the problems with the current identification of Freshwater Management Units and sub-catchments, and the benefits of Miraka's requested approach to identification of hybrid FMU and sub-catchments; and

⁷ Evidence of Richard Wyeth, at paragraph 4.3.

⁸ Practice change is discussed later in these submissions and in the evidence of Dr Mark Paine and Dr Gavin Sheath.

- (f) Elizabeth Kim Hardy; Planner. Ms Hardy provides a planning assessment of the changes sought by Miraka in relation to Block 1 issues only.

Outline of these submissions

1.10 The balance of these submissions will address the following matters:

- (a) Links to later hearing blocks, including the role of practice change;
- (b) Statutory framework;
- (c) Legal and planning issues, including:
 - (i) Giving effect to the higher order documents;
 - (ii) Interpretation of the Vision and Strategy;
 - (iii) Validity of permitted activity rule for Certified Industry Schemes;
- (d) How Miraka's position aligns with other parties;
- (e) Miraka's requested amendments to FMU / sub-catchment boundaries and a potential process to implement Miraka's changes, if they are accepted by the Hearing Panel.

2. LATER HEARING BLOCKS

- 2.1 Miraka is interested in all of PC1 but is particularly concerned about matters that will arise in Hearing Blocks 2 and 3 including the approach to nitrogen, future allocation, GMP, Farm Environment Plans (**FEP**), Certified Industry Schemes and sub-catchment management approaches. The main amendments to PC1 sought by Miraka relate to topics in those later Hearing Blocks, so while Miraka's evidence for Block 1 signals its position on these matters principally in response to preliminary comments made in the Block 1 section 42A report, its detailed evidence and analysis will follow in Blocks 2 and 3.⁹
- 2.2 A common thread running through Miraka's case is the importance of implementing practice change consistently as a foundation step to achieve the necessary improvements in water quality. For that reason its evidence in Block 1 focuses on this issue.

⁹ For example the legal submissions for Beef & Lamb discuss the need for certainty in future allocation. Miraka will comprehensively address this issue in Block 3.

2.3 Miraka's expert on practice change, Dr Paine describes practice change as:¹⁰

...an overarching term for the practical means by which farm businesses and communities adapt to achieve certain outcomes. In relation to Plan Change 1 practice change refers to how farmers can contribute to healthy water targets. For the purposes of Plan Change 1 practice change involves three main components:

(a) Co-development approaches using the knowledge and experience of farm teams, advisers and researchers ensures fit-for-purpose solutions;

(b) Actively managing the co-development process is also a practice that needs to operate effectively; and

(c) Catchments are comprised of communities which must intentionally work together for better outcomes – the practice of social learning.

2.4 In Miraka's view, the provisions of PC1 should enable and help facilitate practice change on all farms. Practice change at a farm level is necessary to support Good Management Practice in Stage 1 of Healthy Rivers. In Stage 2, when more challenging water quality improvements may be required, practice change will assist the community to understand and then implement the necessary changes.¹¹

2.5 As discussed below, Miraka seeks changes to the number of Freshwater Management Units (**FMUs**) and sub-catchments to create management units that are more cohesive, community focused and work better together. This amended freshwater management unit/sub-catchment framework would better support the implementation of practice change.

3. STATUTORY FRAMEWORK

3.1 The Panel will be familiar with the relevant legal tests for changes to a regional plan given the various legal submissions already presented.

3.2 But for completeness, under section 66 of the RMA, when changing a regional plan, a regional council must consider its functions under section 30 and Part 2. Under section 67, a regional plan must give effect to the New Zealand Coastal Policy Statement (**NZCPS**), any national policy statement and any regional policy statement. Each provision must be assessed against the requirements of sections 32 and 32AA including an assessment of the most appropriate provision.

¹⁰ Evidence of Dr Mark Paine, paragraph 4.1.

¹¹ Evidence of Dr Gavin Sheath, paragraphs 4.1-4.4.

- 3.3 The test that has been established in case law is essentially a two-step process involving, first, a consideration of whether the plan addresses all the relevant mandatory requirements in the RMA, followed by a s32 evaluation of the provisions.¹²
- 3.4 The Environment Court's decision in *Long Bay-Okura Great Park Society Inc v North Shore City Council*¹³ distilled and summarised the mandatory requirements for plan changes into a list¹⁴ that has been considered in a number of cases since. The *Long Bay* list is comprised of a series of general requirements coupled with specific requirements for objectives, policies, methods, rules and other matters.
- 3.5 The *Long Bay* list has subsequently been updated by the Courts to reflect various legislative amendments in *High Country Rosehip Orchards Ltd v Mackenzie District Council*¹⁵ and most recently in *Colonial Vineyard Ltd v Marlborough District Council*.¹⁶ The full list, as contained in *Colonial Vineyard*, is outlined in **Appendix 1**. With the necessary amendments to refer to regional councils and their functions, the tests apply to the preparation and change of regional plans.¹⁷
- 3.6 The Court in *Colonial Vineyard* described the process as a series of questions, which for a regional plan change process would apply as follows:¹⁸
- (a) What are the benefits and costs of the proposed plan and the alternatives?
 - (b) Does the proposed plan give effect to any relevant national policy statements, the NZCPS, and the regional policy statement?
 - (c) Does the proposed plan achieve the purpose of the RMA?¹⁹
- 3.7 The High Court in *Royal Forest and Bird Protection Society of New Zealand Inc v Bay of Plenty Regional Council*²⁰ has also recently confirmed that a decision maker has to consider potential plan provisions against all the higher order documents in order to

¹² While distinctions have been made in recent case law between whole of plan reviews, plan changes and variations for scope reasons, for example *Motiti Rohe Moana Trust v Bay of Plenty Regional Council* (2016) 19 ELRNZ 595, the "test" by which they are evaluated *de novo* by the Environment Court is essentially the same. The High Court decision of *Royal Forest & Bird v Bay of Plenty Regional Council*, discussed below, emphasised that both obligations need to be considered.

¹³ *Long Bay-Okura Great Park Society Inc v North Shore City Council* (NZEnvC Auckland, A 78/08, 16 July 2008).

¹⁴ *Ibid* at [34].

¹⁵ *High Country Rosehip Orchards Ltd v MacKenzie District Council* [2011] NZEnvC 387 at [19].

¹⁶ *Colonial Vineyard Ltd v Marlborough District Council* [2014] NZEnvC 55 at [17].

¹⁷ *Day v Horizons Regional Council* [2012] NZEnvC 182 has also recently summarised the obligations in relation to the preparation and change of regional plan.

¹⁸ In *Colonial Vineyard*, these questions were raised in the slightly different context of a District Plan change, so we have altered these questions to reflect that this is a proposed Regional Plan process.

¹⁹ Although this final step may be redundant in cases where it is no necessary to resort to Part 2.

²⁰ *Royal Forest and Bird Protection Society of New Zealand Inc v Bay of Plenty Regional Council* [2017] NZHC 3080. The subject matter of the decision was an appeal against a decision by the Environment Court on the Regionally Significant Infrastructure provisions in the Bay of Plenty Regional Coastal Environment Plan.

comply with its obligations under section 67(3) to give effect to those documents.²¹ It is not allowable to rely only on the settled provisions of the existing instruments.

3.8 Finally, and uniquely for PC1, the *Vision and Strategy* has a special statutory status as set out in the Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010 (River Settlement Act) and related statutes:²²

- (a) It is intended by Parliament to be the primary direction setting document for the Waikato River and the activities within the catchment;²³
- (b) It is part of the Waikato Regional Policy Statement (**RPS**) by operation of law²⁴ rather than a Schedule 1 process;
- (c) A local authority must not amend a planning instrument if the amendment would be *inconsistent* with the Vision and Strategy;²⁵
- (d) The Vision and Strategy prevails over any inconsistent provision in a national policy statement.²⁶

King Salmon decision

3.9 The Supreme Court in *King Salmon*²⁷ makes a number of relevant observations regarding the plan change process, and how higher order documents should be given effect to as part of this process. In *King Salmon*, the Supreme Court described the following principles:

- (a) The obligation to give effect to a national policy statement or regional plan simply means to implement;
- (b) That, on the face of it, is a strong directive, creating a firm obligation on the part of those subject to it;
- (c) A requirement to give effect to a policy that is framed in a specific and unqualified way may, in a practical sense, be more prescriptive than a more general policy;

²¹ Ibid, at [76]-[89]. This finding was arguably contrary to the concept of particularisation and the hierarchy of plan documents set out by the Supreme Court. A matter which was noted by Jackson J in *Self Family Trust v Auckland Council* [2018] NZEnvC 49.

²² The various statutes were outlined in the opening legal submission for the Waikato Regional Council and Miraka relies on those submissions.

²³ Section 5 of Waikato River Settlement Act.

²⁴ Section 11 of River Settlement Act.

²⁵ Section 12(3) River Settlement Act.

²⁶ section 12(1)(a) River Settlement Act.

²⁷ *Environmental Defence Society Inc v The New Zealand King Salmon Co Ltd* [2014] NZSC 38, [2014] 1 NZLR 593 [*King Salmon*].

- (d) Decision-making on plans and plan changes occurs under the relevant plan making sections, not under Part 2;
- (e) The hierarchal nature of RMA plans mean it is generally not necessary to resort to Part 2 or higher order documents to determine appropriate plan provisions unless there is invalidity, uncertainty or incompleteness;²⁸
- (f) The NZCPS is, in effect, Part 2 for the coastal environment and there will be few instances when it is necessary to consider Part 2; and
- (g) Although a plan may appear to pull in different directions, a thorough analysis of the relevant provisions, paying careful attention to the words used, should be done to resolve or minimise areas of conflict.²⁹ In particular, the Supreme Court considered that only if the policy conflict remains after a close analysis of the wording is there any justification for reaching a determination of one policy prevailing over another and that the area of conflict should be kept as narrow as possible.³⁰

Application to Plan Change 1

3.10 Based on these legal principles, Miraka considers that in relation to PC1:

- (a) The National Policy Statement for Freshwater Management (**NPSFM**), the Vision and Strategy (as part of the RPS) and the balance of the RPS all need to be implemented in PC1 (ie given effect to);
- (b) Recourse to Part 2 is only available if there is uncertainty, incompleteness or invalidity. The Panel may find that some aspect of the Vision and Strategy or the NPSFM is uncertain or there is incomplete coverage. But for its part, Miraka does not consider there is incompleteness or uncertainty that would justify recourse to Part 2;
- (c) The Vision and Strategy is not a code. It is not, in a *King Salmon* sense, Part 2 for the Waikato River, as the NZCPS is for the coastal environment. It is the primary direction setting document, but not the sole one;
- (d) For matters that are not addressed by the Vision and Strategy, the NPSFM must be implemented along with the balance of the RPS;

²⁸ Although the High Court in *Royal Forest and Bird v Bay of Plenty Regional Council* declined to extend the same logic to the obligation to give effect to a regional policy statement or a national policy statement.

²⁹ *Environmental Defence Society Inc v The New Zealand King Salmon Co Ltd* at [73].

³⁰ *Ibid*, at [129]-[130].

- (e) In our view the Supreme Court's general statement about how to reconcile competing planning documents should apply to interpreting the Vision and Strategy, the NPSFM and the relationship between the two;
- (f) In this way, in the event of an apparent conflict in the provisions of higher order documents, all efforts should be made to minimise any area of conflict and only then should a decision be made on which aspects take precedence, after paying close attention to the words;
- (g) However, there needs to be some caution about focusing too closely on the exact words of the Vision and Strategy. The Vision and Strategy is not an RMA document, was not subject to a Schedule 1 process and was prepared before the *King Salmon* decision. (By contrast the NZCPS was subject to a full section 32 assessment, public submissions and a hearing). It seems unlikely that the provisions of the Vision and Strategy were drafted with the intention of being closely analysed and applied as if they were rules, with disproportionate consequences;³¹ and
- (h) Finally, the River Settlement Act applies so that the Vision and Strategy prevails over any inconsistent provision of the NPSFM or the RPS.

3.11 This is clearly a challenging interpretative process.

3.12 In relation to the Vision and Strategy itself, there seems to have been considerable discussion about the wording of the objectives.³² But those objectives are pursued in order to achieve the Vision and the objectives must be read in light of this overarching Vision, namely 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.*

3.13 The most fundamental part of the Vision is achieving healthy rivers. A healthy river is one that sustains abundant life **and** a prosperous community. It follows that the prosperity of the community is an important part of the Vision and must be a relevant

³¹ The dissenting judgement of Ronald Young J in *King Salmon* highlighted the potential consequences of a disproportionate approach to interpretation of provisions in higher order documents and applying too strict an interpretation: "...I think it is wrong to construe the NZCPS and, more particularly, certain of its policies, with the rigour customary in respect of statutory interpretation" at [198]. His concerns would seem to apply equally in respect of too strict an application of certain objectives in the Vision and Strategy, most noticeably the objective that the entire river system is swimmable along its entire length.

³² Miraka considers that there is no hierarchy between the objectives in the Vision and Strategy. This is consistent with the statements of the Environment Court in *Carter Holt Harvey Ltd v Waikato Regional Council* [2011] NZ EnvC 380. The objectives need to be read together and only in the event of a conflict should one objective, or part of an objective, be preferred over another. Miraka generally agree with the analysis outlined in the legal submission for Federated Farmers on these points.

factor when considering the provisions of PC1.³³ The Panel will need to determine what weight to give that factor, but it cannot be set aside or ignored given its place in the Vision itself.

- 3.14 The Vision and Strategy envisages a long term improvement of water quality across the entire length of the rivers and a consistent improvement. The Environment Court³⁴ has found that this requires some level of betterment of existing discharges, not just a requirement to avoid, remedy or mitigate. So, the trajectory of water quality in the Rivers has to be one of improvement.
- 3.15 But the Vision and Strategy gives no particular timeframe for when the restoration and protection must occur, to what level it must occur and how to achieve those outcomes. The goal of swimmability along the entire length of the Rivers would seem to come closest but that is one objective amongst many.
- 3.16 Overall, the Vision and Strategy provides scope to adopt the most appropriate way to achieve the overall restoration and enhancement. This approach fits well within the general statutory framework. Within “the boundaries” of giving effect to the higher order documents, the Hearings Panel must determine what are the most appropriate provisions, including costs, benefits, efficiency and effectiveness in order to achieve the purpose of the Act and implement the objectives of the plan change.
- 3.17 From Miraka’s perspective:
- (a) The staged approach of PC1 is the most appropriate way to implement the Vision and Strategy in the short term. It provides time to develop the optimal approach to further improvements in water quality and therefore there is no need to commit now to any pre-emptive contaminant allocation;
 - (b) If every landowner seeks to achieve some level of betterment in terms of current levels of discharge, that would tend to support Miraka’s approach that discharge of nitrogen should be managed in the same way as other contaminants and that all enterprises should contribute to reductions – not just those currently above the 75th percentile; and
 - (c) The methods for achieving the long term and short term water quality targets must take into account the impact on the prosperity of the community and be

³³ Objective (d) also expressly refers to 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” as identified in the evidence of Ms Kim Hardy, paragraphs 5.9-5.10.

³⁴ *Puke Coal v Waikato Regional Council* [2014] NZEnvC. It seems that PC1 as a whole will achieve an improvement in water quality and so satisfy this requirement for betterment. By contrast, the Environment Court in *Puke Coal* was dealing with one application in the absence of a considered and integrated plan approach to implementing the Vision and Strategy.

implemented in a way that minimises social and community disruption and maximises social cohesion.³⁵

3.18 In relation to Block 1, Miraka's primary proposed amendment is the creation of new FMU/sub-catchments. This matter is not addressed within the Vision and Strategy but is addressed in the NPSFM. Ms Hardy's evidence assesses how that relief will give effect to the NPSFM.³⁶

4. CERTIFIED INDUSTRY SCHEMES

4.1 The Panel in its Minute of 19 February 2019 noted that some submitters have questioned the validity of Permitted Activity Rule 3.11.5 for Certified Industry Schemes. The legal approach and principles for validity of a permitted activity have been set out in Opening Submissions by Counsel for Waikato Regional Council.³⁷ Miraka concurs with that approach and principles. The Certified Industry Scheme Rule is, with some amendments, legally valid.³⁸

4.2 Miraka's case for Block 2 will also outline the benefits of the approach, why it is an efficient and effective means to achieve the objectives of PC1 and discuss any amendments that may be proposed in the relevant Section 42A report.

5. MIRAKA'S ALIGNMENT WITH OTHER PARTIES

5.1 In relation to Block 1, Miraka's proposed amendments to the FMU/sub-catchment approach is specifically supported by Federated Farmers, Wairakei Pastoral and Department of Conservation. Miraka's emphasis on practice change is generally supported by farming interests. Miraka also supports the concerns expressed by the local authorities in the WRTA group about the economic and social cost to communities of implementing PC1.

5.2 Miraka generally opposes the amendments sought by the Department of Conservation (apart from in relation to FMUs), Royal Forest and Bird Protection Society and Fish and Game.

³⁵ This submission aligns well with Fonterra's submission at paragraph 2.7 that "there needs to be an element of proportionality in implementing PC1 and that can be reflected in the timeframe over which the Vision and Strategy is achieved....This allows time for technological advances in respect of management of contaminants, and allows time for any social and economic adjustment that might be required". It also aligns with the approach outlined by counsel for Federated Farmers.

³⁶ Evidence of Kim Hardy, paragraphs 6.5-6.9, and rebuttal evidence of Kim Hardy, sections 4 – 6.

³⁷ At paragraph 88 – 105.

³⁸ The legal submissions for Fonterra also discussed the vires of the rule in the context of section 70, although that does not seem to be focus of the allegation that the Rule is ultra vires.

5.3 In relation to future hearing blocks, Miraka:

- (a) Opposes the current approach in PC1 to nitrogen (including use of Overseer, Nitrogen Reference Points and focus on 75th percentile). This partially aligns with Federated Farmers but is inconsistent with Fonterra, Dairy NZ and Department of Conservation;
- (b) Supports the use of GMP and FEPs which aligns with other farming interests;
- (c) Supports the rules about Certified Industry Schemes, which is also supported by other farming interests but opposed by Department of Conservation, Fish and Game and Forest and Bird; and
- (d) Opposes any pre-emptive allocation regime for contaminants, including one based on land suitability, primarily due to a lack of adequate information to support such a particular approach at this time. This is inconsistent with the positions of Department of Conservation, Royal Forest and Bird, Beef and Lamb and Fish and Game.

6. FRESHWATER MANAGEMENT UNITS

6.1 The evidence of Dr Sheath³⁹ and Ms Addenbrooke⁴⁰ outline Miraka's proposed changes to the notified FMUs and sub-catchment boundaries and the benefits of that approach. Ms Hardy's evidence outlines the changes to the PC1 provisions necessary to implement the proposed changes.⁴¹

6.2 Ms Addenbrooke's evidence outlines a number of suggested criteria to identify the new hybrid FMU/sub-catchment boundaries. Using those criteria Miraka has prepared an example of reconfigured boundaries for the Upper Waikato.⁴² Importantly, this map is only **a representative example** of how the reconfigured boundaries could look. It is not intended to represent a complete solution. Miraka lacks the resources or information to undertake a similar exercise for the whole of the catchment.

6.3 However, in the event the Panel were to consider that reconfiguration of the boundaries has merit, Miraka recommends that the Panel direct that a process be undertaken to identify and assess the most appropriate boundaries based on a series of principles or criteria. That process could involve:

- (a) Identification of the principles or criteria by the Panel;

³⁹ Evidence of Dr Gavin Sheath, paragraphs 4.7-4.11.

⁴⁰ Evidence of Jude Addenbrooke, paragraphs 4.6-4.16.

⁴¹ Evidence of Kim Hardy, paragraphs 6.18 and 6.19.

⁴² Evidence of Jude Addenbrooke, Figure 2, page 9.

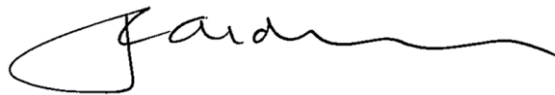
- (b) Direction that Waikato Regional Council prepare an amended set of maps based on those principles, which are circulated to all submitters with an interest in this topic;
- (c) Expert conferencing on the draft maps; and
- (d) A further hearing session on this issue to allow submitters to identify and explain any points of difference and requested amendments.

6.4 Such a process is within the broad powers of the Hearing Panel and there is sufficient time to the end of the hearing to allow this to occur. It would ensure that affected parties have a say in the amended boundaries and matters of detail can be resolved.

7. CONCLUSION

7.1 Miraka supports PC1 as it aligns with the company's values and aspirations. In relation to Block 1, it is largely content with the notified version of PC1 and relies on the technical work undertaken by the Waikato Regional Council. However, it seeks amendments to the FMU and sub-catchment boundaries to create a hybrid FMU/sub-catchment for the reasons outlined in its evidence.

DATED this 4th day of April 2019



J Caldwell / M Gribben

Counsel for Miraka Limited

Appendix 1

List of mandatory requirements for plan changes/making

Full list of plan making matters from *Colonial Vineyard* (footnotes omitted and emphasis in the original):

[17] ...

A. General requirements

1. A district plan (change) should be designed **to accord with**¹⁸ – and assist the territorial authority **to carry out** – its functions¹⁹ so as to achieve, the purpose of the Act²⁰.
2. The district plan (change) must also be prepared **in accordance with** any regulation²¹ (there are none at present) and any direction given by the Minister for the Environment²².
3. When preparing its district plan (change) the territorial authority **must give effect to**²³ any national policy statement of New Zealand Coastal Policy Statement²⁴.
4. When preparing its district plan (change) the territorial authority shall:
 - (a) **have regard to** any proposed regional policy statement²⁵;
 - (b) **give effect to** any operative regional policy statement²⁶.
5. In relation to regional plans:
 - (a) the district plan (change) must **not be inconsistent** with an operative regional plan for any matter specified in section 30(1) or a water conservation order²⁷; and
 - (b) **must have regard to** any proposed regional plan on any matter of regional significance etc²⁸.
6. When preparing its district plan (change) the territorial authority must also:
 - **have regard to** any relevant management plans and strategies under other Acts, and to any relevant entry in the Historic Places Register and to various fisheries regulations²⁹ to the extent that their content has a bearing on resource management issues of the district; and to consistency with plans and proposed plans of adjacent territorial authorities³⁰;
 - **take into account** any relevant planning document recognised by an iwi authority³¹; and
 - **not have regard to trade competition**³² or the effects of trade competition;

7. *The formal requirement that a district plan (change) must³³ also state its objectives, policies and the rules (if any) and may³⁴ state other matters.*
- B. *Objectives [the section 32 test for objectives]*
8. *Each proposed objective in a district plan (change) **is to be evaluated** by the extent to which it is the most appropriate way to achieve the purpose of the Act³⁵.*
- C. *Policies and methods (including rules) [the section 32 test for policies and rules]*
9. *The policies are to **implement** the objectives, and the rules (if any) are to **implement** the policies³⁶;*
 10. *Each proposed policy or method (including each rule) is to be examined, **having regard to its efficiency and effectiveness**, as to whether it is the most appropriate method for achieving the objectives³⁷ of the district plan **taking into account**:*
 - (i) *the benefits and costs of the proposed policies and methods (including rules); and*
 - (ii) *the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the policies, rules, or other methods³⁸; and*
 - (ii) *if a national environmental standard applies and the proposed rule imposes a greater prohibition or restriction than that, then whether that greater prohibition or restriction is justified in the circumstances³⁹.*
- D. *Rules*
11. *In making a rule the territorial authority must **have regard to** the actual or potential effect of activities on the environment⁴⁰.*
 12. *Rules have the force of regulations⁴¹.*
 13. *Rules may be made for the protection of property from the effects of surface water, and these may be more restrictive⁴² than those under the Building Act 2004.*
 14. *There are special provisions for rules about contaminated land⁴³.*
 15. *There must be no blanket rules about felling of trees⁴⁴ in any urban environment⁴⁵.*
- E. *Other statutes: [sic]*
16. *Finally territorial authorities may be required to comply with other statutes.*
- F. *(On Appeal)*
17. *On appeal⁴⁶ the Environment Court **must have regard to** one additional matter – the decision of the territorial authority⁴⁷.*