

IN THE MATTER

of the Resource Management Act 1991
("the Act")

AND

IN THE MATTER

of the proposed Waikato District Plan
(Stage 1) – Hearing 2

**STATEMENT OF EVIDENCE OF JOHN ANDREW RIDDELL FOR THE
DIRECTOR-GENERAL OF CONSERVATION**

23 September 2019

**Counsel for Director-General
of Conservation**

Victoria Tumai
Troy Ulrich

Private Bag 3072
Hamilton 3240

Phone: 07 838 5687

INTRODUCTION

1. My name is John Andrew Riddell. I have been practising as a resource management planner on a part-time basis since 1989 and a full-time basis since 1993. Until November 1998 I was self-employed, although I did work for Nugent Consultants Limited on a part time basis from 1993 until 1996. Between November 1998 and June 2013 I was employed by the Department of Conservation (“the Department”). I am currently self-employed, operating under the company name CEP Services Matauwhi Limited. I hold the qualification of Bachelor of Resource and Environmental Planning with First Class Honours. I am a member of the New Zealand Planning Institute.

Experience

2. A significant portion of my resource management work has involved assessing draft and proposed regional policy statements and regional and district plans, preparing submissions and giving evidence on policy statement and plan content, participating in mediation on appeals over proposed policy statements and plans, and giving evidence to the Environment Court on provisions of policy statements and plans.
3. In the last five years I have given advice and/or evidence and/or participated in mediation and expert conferencing on the following proposed policy statements and plans:
 - Auckland Unitary Plan;
 - proposed Thames-Coromandel District Plan;
 - Bay of Plenty Coastal Environment Plan;
 - draft Gisborne Water and Soil Plan;
 - Northland Regional Policy Statement;
 - Whangarei District Plan Changes;
 - draft Far North District Plan; and
 - Regional Coastal Plan – Kermadec and Subantarctic Islands.

4. A comprehensive list of the policy statements and plans I have been involved in (comments, submissions, evidence, mediation, and/or appeals) since 1998 is given in the footnote.¹
5. In addition to this policy statement and plan work I have experience in preparing, assessing, submitting and giving evidence on resource consents.² This includes evidence to the Environment Court on applications for coastal subdivision, tidal power generation, the taking of groundwater, and mangrove removal. I have processed resource consent applications for Far North District Council.
6. I have been asked by the Director-General of Conservation (“the Director-General”) to provide evidence in regard to the Director-General's submissions and further submissions on the proposed Waikato District Plan (“the proposed Plan”).

Involvement in preparation of the Director-General's submission and appeal on the proposed Plan

7. I was engaged on this matter in early September this year. I was not involved in the preparation of the Director-General's submission and further submission on the proposed Plan.
8. I currently have a limited knowledge of the Waikato district.

Code of Conduct

9. I have read and agree to comply with the Code of Conduct for Expert Witnesses produced by the Environment Court (2014). My qualifications and experience as an expert are set out above. Other

¹ I have prepared reports on financial contributions that were part of the preparation of the Far North District Plan and the Waitakere City District Plan. I have provided evidence on, and/or provided planning advice for appeal negotiations and mediation on: the Auckland City District Plan - Isthmus section, Far North District Plan, Bay of Islands District Scheme (which included a coastal plan component), Whangarei District Plan (including several plan changes), Kaipara District Plan, Kaikoura District Plan, Northland Regional Policy Statements (there have been two), Regional Water and Soil Plan for Northland, Regional Coastal Plan for Northland and plan changes to that plan, the draft Gisborne Water and Soil Plan, the Auckland Unitary Plan, the proposed Thames-Coromandel District Plan, the Regional Coastal Plan – Kermadec and Subantarctic Islands, and the Bay of Plenty Coastal Environment Plan. I was one of co-authors of the *Sustainable Development Plan for Kororipo-Kerikeri Basin*, October 2005. This was a management plan prepared under the Reserves Act for the combined reserve land at Kororipo-Kerikeri Basin administered by the Department of Conservation and the Far North District Council.

² Applications that I have prepared include applications for a mangrove boardwalk, discharges from fish processing facilities, indigenous vegetation clearance, earthworks, boat ramp, jetties, boat slip, buildings in the coastal marine area, houses in flood hazard areas, aerial pest control (1080 and brodifacoum), medical centre, restaurant, huts on public conservation land, and several houses and other structures.

than those matters identified within my evidence as being from other experts, 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.

APPROACH TAKEN IN EVIDENCE

10. This evidence is confined to three issues under consideration in Hearing 2:

- including purpose, introductions, zone descriptions and anticipated outcomes for each zone;
- building setback from perennial and intermittent streams; and
- the re-notification of Stage 1 of the proposed Plan when Stage 2 is notified.

11. I have read the Hearing 2 report required by section 42A of the Act on these matters.

12. In this statement, I use the following numbering:

- for references to chapter 1 of the proposed Plan – I use the amended numbering recommended in the Hearing 1 report;
- for references to all other parts of the proposed Plan – I use the notified numbering.

ZONE AND CHAPTER DESCRIPTIONS

Submission 585.32 by Director-General of Conservation,
paragraphs 215 - 222 of Hearing 2 report

Further submission FS1293.6 by Director-General of Conservation
in support of submission 81.2 by Waikato Regional Council,
paragraphs 215 - 222 of Hearing 2 report

13. The Director-General seeks that introductions and zone descriptions are included at the beginning of each chapter “to provide more guidance on the plan's structure to plan users”. The main reason given for the submission is the need for “a good overview of the indigenous biodiversity of the Waikato District, the loss of indigenous vegetation and ecosystems over time, its significance now and therefore the

issues in relation to biodiversity in the area” in chapter 3 of the proposed Plan.

14. The Waikato Regional Council's submission seeks that each zone chapter be amended to provide details and the purpose and anticipated outcomes of the corresponding zone or subzone.
15. The recommendation in the Hearing 2 report is that the submissions be rejected, for the reasons summarised in paragraph 221 of the report:

221. Overall, a zone introduction/purpose is not required by the National Planning Standards and adding these to the PWDP will be inefficient and create unnecessary rework.
16. In my opinion, this misses the important question to consider with respect to these submissions: will granting these submissions result in a more user-friendly plan that aids consistent decision making? I consider that it will.
17. In my experience, it is good practice to provide good information in a plan on the values of, in this case, the district; and on what is trying to be achieved with each zone or overlay. Such an approach guides consistent decision making, better addresses cumulative effects, and facilitates the monitoring of how well the proposed Plan achieves its expected results.
18. This is recognised in the discussion document on the proposed National Policy Statement on urban development.³ At page 33 of this discussion document it states:

Current district plans generally have objectives and policies that are consistent with enabling development. However, the collective impact of rules and assessment criteria in plans often doesn't support the kinds of development envisioned by the plans.

Zone descriptions will set out the outcomes for development, and the resulting changes (including for different types of amenity). This sets out clear expectations about the type of development intended for an area, giving communities certainty about what will be protected while enabling projects to go ahead.

Section 32 reports often assess the individual impact of rules, but it is their cumulative effect that has real impact on development. Zone descriptions provide a broader outcome

³ Ministry for the Environment. 2019. *Planning for successful cities: A discussion document on a proposed National Policy Statement on Urban Development*. Wellington. Ministry for the Environment.

against which the objectives, policies, rules and assessment criteria (including relevant spatial layers) can be measured – individually and cumulatively. When these collective objectives, policies, rules and assessment criteria fail to enable the outcomes in the zone descriptions, the proposal requires a review and a response (including plan changes and other methods) from the local authority.

National Planning Standards

19. Although this proposed Plan is not required to align with the April 2019 National Planning Standards for five years, it does make sense to start aligning the proposed Plan to those standards now.
20. In my opinion, it is possible to provide the introductory statements and purpose of each zone and anticipated outcomes, sought in the submissions, in a way that would make transitioning to the National Planning Standards easier.
21. The relevant requirements from the National Planning Standards are:
 - key information about the district that is relevant from a resource management perspective must be included in the description of the district chapter;
 - zone descriptions must be those given in the National Planning Standards for each of the specific zones set out in the National Planning Standards; the zone descriptions are generic as would be expected for zones that will be applied across all of the country;
 - objectives, policies and (if any) rules must be in the district-wide, zone, precinct and development area chapters;
 - issues, methods other than rules, principal reasons and anticipated environmental results can, if desired, be included in all or some of the district-wide, zone, precinct and development area chapters.

Amendments to the proposed Plan

22. In the next few paragraphs, I identify how and where amendments can be made to the proposed Plan to provide the information sought in the submissions in a way that would ensure an easy transition, in time, to following the National Planning Standards in the proposed Plan.

23. Description of district The first amendment would be to insert further sub-sections in the section in chapter 1 of the proposed plan titled “Description of district and issues for Waikato”. In my opinion, at a minimum further descriptive sub-sections that are required are: Indigenous biodiversity, natural character, landscape, and coastal environment.
24. I consider that the current descriptive statements on these matters in the proposed Plan is very inadequate:
- 1.2.3⁴ The Rural environment ...
- (b) In addition, the rural parts of the district are valued for their landscape, character and amenity values.
- and
- 1.3.2 Protecting the rural environment ...
- (b) Activities affecting landscape, historic and amenity values including rural character, recreational activities, high quality soils, significant mineral resources and ecological values need to be managed to avoid, **remedy or mitigate** adverse effects on the environment, including cumulative effects.
25. The rest of the background about the rural environment is concerned with primary production and its protection, in terms of economic well-being.
26. Section 1.3 of the proposed Plan, titled “What does this mean for Waikato strategic objectives and directions”,⁵ includes further discussion of indigenous biodiversity, natural character, landscape and coastal environment.⁶
27. In my opinion, this section of the proposed Plan does not provide a useful description of the ecological, natural character, landscape and coastal environment characteristics and values within the District.
28. The closest this section comes to providing a description of natural values is in sub-section 1.3.7 where geographic ecological linkages are

⁴ Using the re-numbering from the Hearing 1 report setting out the recommended amendments to Chapter 1; Introduction.

⁵ Using the section re-numbering recommended by the planner reporting on the submissions. A further recommendation is to delete “strategic objectives and directions” from the section heading.

⁶ See sub-sections 1.3.7 Natural environment, 1.3.7.1 Indigenous biodiversity, 1.3.7.2 Landscape and natural character, and 1.3.7.4 The coast.

identified. It is noticeable, however, that indigenous species present in the district, are not discussed.⁷

29. Statements of zone purpose The second change would be to provide clear statements of the purpose and expected outcomes of each zone.
30. Currently it is necessary to review multiple objectives and policies to discern the overall purpose of each zone, and to understand the desired outcomes that will result if the zone's intentions are achieved.
31. Without clear, integrating guidance, there is a risk that different people reviewing these multiple objectives and policies applying to a zone would give differing weights to these objectives and policies and reach different conclusions about the purpose of each zone.⁸
32. A zone statement can be either a descriptive statement or it can be expressed as an objective or policy. Given the desirability of setting out the plan so that it can more easily be shifted to the National Planning Standard format at a later date,⁹ I prefer the use of an objective and/or policy for this purpose.
33. In my opinion, a zone statement in the form of an integrating objective and, possibly, policy could be developed by reviewing the existing multitude of zone specific objectives and policies in chapters 3, 4, 5, 7 and 9 of the proposed Plan. The tangata whenua, natural environment, and historic heritage objectives and policies should also be reviewed as part of this exercise, as it is desirable for zone statements to anticipate and provide guidance on potential conflicts with district wide objectives and policies.
34. Anticipated outcomes The third amendment is the addition of anticipated outcomes for each zone, and for the district wide objectives and policies. Once again, this is an exercise of carefully reviewing the existing objectives and policies.

⁷ Except for a brief acknowledgement of the importance of wader bird habitat off the Miranda coast, see sub-section 1.3.7.4(b).

⁸ This risk is reduced with respect to the Rural Zone because of strategic objective 5.1.1. This appears to be the only objective in the proposed Plan where a statement is made that it has primacy over other objectives. Note that the primacy is over other provisions in chapter 5 only, so does not address conflicts with objectives and policies in, for example, chapter 2 or 3 of the proposed Plan. There is also reduced risk in discrete areas such as the various town centres, for which policies set out the intended outcome in some detail.

⁹ And the very generic wording of the zone statements into the National Planning Standards.

35. Clearly stated anticipated outcomes assists the monitoring of the effectiveness of the proposed Plan, and the extent to which what is intended is being achieved.

SETBACK FROM PERENNIAL AND INTERMITTENT STREAMS

Further submission 1293.9 by the Director-General of Conservation in support of submission 81.9 by Waikato Regional Council, paragraphs 61 to 75

Further submission 1293.20 by the Director-General of Conservation in support of submission 286.27 by Waikato-Tainui, paragraphs 61 to 75

36. The Waikato Regional Council submission supported by the Director-General of Conservation is to provide for a minimum 10 metre building setback from perennial and intermittent streams in all zones.
37. The Waikato-Tainui submission is to amend the proposed Plan to provide setbacks from waterways that are consistent with proposed Plan Change 1 to the Waikato Regional Plan and that give effect to the Vision and Strategy for the Waikato River and the Waikato-Tainui Environment Plan.
38. The recommendation in the report on Hearing 2, in relation to these submissions, is that the submissions be rejected. Reasons given for this recommendation are that proposed Plan Change 1 to the Waikato Regional Plan concerns setbacks for water quality purposes, something for which the Waikato District Council has no responsibility.
39. The comment is also made that there is no information on the costs and benefits of extending the 10 metre building setback rule to zones other than the three in which it currently applies.¹⁰
40. Reasons for including building setbacks from water bodies in district plans include future proofing esplanade reserves and strips, providing for public access to and along water bodies, recognising and providing for the protection of natural character of the margins of water bodies, protecting riparian habitats and corridors for indigenous species, and amenity and landscape values.
41. Specific objectives and policies on building setbacks from water bodies include:

¹⁰ These being the Industrial, Industrial Heavy and Village zones.

Policy 3.5.3 Protecting the natural character qualities of wetlands, and lakes and rivers and their margins

(a) Protect the natural character qualities of wetlands, and lakes and rivers and their margins from inappropriate subdivision, use and development by: ...

(iv) requiring appropriate setbacks of activities from wetlands, lakes and rivers; ...¹¹

Policy 4.7.2 Subdivision location and design

(a) Ensure subdivision is located and designed to: ...

(ii) Establish boundaries that avoid buildings and structures dominating adjoining land or public places, the coast, or fresh waterbodies' ...

Policy 5.3.9 Non-rural activities

(b) Avoid buildings and structures dominating land on adjoining properties, public reserves, and the coast or waterbodies.

Policy 8.2.2 Natural values

(a) Enhance the natural environment during use and development of reserves, by: ...

(iii) restoring and linking habitats for indigenous species, particularly in lake catchments, riparian margins, lowland ecosystems, wetland areas and coastal dunes and ecosystems.

Water setback rules

42. The proposed Plan includes water setback rules for buildings as set out in the following table:¹²

Building Setback from	Rural Zone	Residential Zone Business Zone	Village Zone	Country Living Zone	Industrial Zone Industrial Heavy Zone	Reserve Zone
Lake	32 m	23 m	30 m	23 m	30 m	32 m (lake > 8 ha)
Wetland	32 m	23 m	30 m	23 m	30 m	32 m (wetland > 1 ha)
River other than Waikato or Waipa Rivers	23 m	23 m	30 m	23 m	30 m	32 m (river width > 3 m)
Waikato or Waipa Rivers	28 m	28 m	50 m	37 m	50 m	37 m

¹¹ Policy 3.5.3(a)(v) makes a similar statement with regard to the setback of buildings in the coastal environment.

¹² There is limited provision for specified buildings within these setbacks. For the Whaanga Coast Development Areas the building setback is 20 metres from any watercourse and 100 metres from mean high water spring. There is no water setback in the Business Zone Tamahere. There is a 23 m setback from mean high water spring in the Rangitahi Peninsula Zone. There is no water setback for the Airport and Hampton Downs zones.

Building Setback from	Rural Zone	Residential Zone Business Zone	Village Zone	Country Living Zone	Industrial Zone Industrial Heavy Zone	Reserve Zone
mean high water springs	23 m	23 m		27.5 m		32 m
perennial or intermittent stream			10 m		10 m	

43. All zones identified above provide for a building setback from rivers in the order of between 23 and 32 metres for rivers other than the Waikato and Waipa Rivers where a water setback of 28 to 50 metres applies, depending on the particular zone.
44. There is a 10 metre building setback from perennial or intermittent streams applying in three of the zones.

Rivers and perennial or intermittent streams – is there a difference?

45. The definition of “river” in the Resource Management Act is:
- means a continually or intermittently flowing body of fresh water; and includes a stream and modified watercourse; but does not include any artificial watercourse (including an irrigation canal, water supply race, canal for the supply of water for electricity power generation, and farm drainage canal).
46. The dictionary definition of “perennial” is
- Of a spring, stream, etc.: lasting or continuing throughout the year. The New Shorter Oxford English Dictionary, volume 2, 1993.
47. It follows that a “perennial or intermittent stream” is, in terms of the Act, a subset of “river”.

The Regional Council submission

48. Turning again to the submission by the Waikato Regional Council.; it seeks that in all zones there is a building setback that is a *minimum* of 10 metres from perennial or intermittent streams.
49. This 10 metre building setback requirement for perennial or intermittent streams is already exceeded in all zones other than the Industrial, Industrial Heavy and Village zones as the setbacks for rivers apply.

50. The one zone where this is not the case is the Reserves Zone. There is no setback provided where rivers are narrower than 3 metres average width.¹³
51. While correcting this gap in the setback rules could be achieved by inserting a further rule setting a 10 metre building setback from perennial or intermittent streams, in my opinion a better course of action would be to delete the minimum 3 metre average width restriction applying to the building setback from rivers other than the Waikato and Waipa River.
52. In my opinion such an amendment to rule 25.3.5.2 P1(a)(ii) is within the scope of the submission by the Waikato Regional Council.
53. I consider that it is also more consistent with policy 8.2.2 on natural values, and policy 3.5.4(a)(iv) on protecting the natural character of rivers, lakes and wetlands.

INTEGRATING STAGE 2 AND STAGE 1 OF PROPOSED PLAN

Further submission by Director-General of Conservation in support of submissions 730.1 and 730.2 by Mercury NZ. This further submission is not identified in the Hearing 2 planner's report. The Mercury NZ submissions are discussed at paragraphs 44 to 50.

54. The two Mercury NZ submissions supported by the Director-General seek:
- 730.1 Withdraw all Stage 1 of the Proposed Waikato District Plan and re-notify Stage 1 together with Stage 2 once a thorough flood analysis has been undertaken and consulted on.
- 730.2 Review all of the Stage 1 provisions for urban growth and land use intensification (objectives, policies, methods and rules) in order to manage flood hazard risk at Stage 2 and hear submissions for both stages together.
55. The Director-General's further submission comments that the proposed Plan would be more cohesive if Stage 1 and 2 were to notified together, alongside analysis of flood hazard risk in the district to ensure development is not occurring within potential flood risk areas.
56. The Hearing 2 planning report on the submissions makes the following comments on the Mercury NZ submissions:

¹³ Similarly for a setback from lakes less than 8 hectares in area, and wetlands less than 1 hectare in area.

- it would be inefficient and expensive to now change from the two stage notification of the proposed District Plan;
 - 47. “Nevertheless, it critical that the remainder of the process ensures that decisions are made in an integrated manner on Stage 1 zoning requests and other growth matters to which Stage 2 matters are critical.”
 - the intention is to notify Stage 2 in early 2020, with hearings in early 2021.
 - Stage 2 submissions will be able to be heard in conjunction with Stage 1 submissions on zoning and other growth matters.
 - In the reporting planner's opinion, this process is an effective mechanism that makes a single cohesive decision on Stage 1 and 2 matters possible.
57. Notifying the proposed Plan in two stages requires careful management of the submission process, and the allowable scope of submissions on Stage 2 of the proposed Plan, as information on natural hazards, their extent and potential impacts, can have wider implications for already notified proposed Plan provisions than just zoning and other growth matters.
58. For example, there could be species or habitat specific considerations evident when the natural hazard mapping is released as part of Stage 2 that requires amendments to, or new, objectives and policies in Chapter 3, Natural Environment.
59. In my opinion, the scope of matters that can be addressed in Stage 2 submissions should extend to all provisions in Stage 1 of the Plan where it can be shown that the further information on natural hazards and climate change to be provided in Stage 2 of the proposed Plan requires it.
60. To do otherwise would be to increase the likelihood that Stage 2 will not integrate properly with Stage 1 of the proposed Plan.

MISCELLANEOUS

61. While reading the proposed Plan I have noticed what appear to be words missing from two rules. It is likely that this is an error.
62. Rural Zone rule 22.1.5(1) D15, which currently states:

Afforestation in any part of an Outstanding or Natural Character Area or High Natural Character Area.
63. Should this rule refer to “an Outstanding Natural Landscape or Natural Character Area”?
64. There also appears to be words missing from the related Rural Zone rule 22.1.2(1) P6 which provides for afforestation as a permitted activity outside Outstanding Natural Landscapes.
65. Has a reference to Outstanding Natural Character Areas and High Natural Character Areas been accidentally omitted from this rule?
66. Note that this is my own observation, and is not related to any submission or further submission by the Director-General of Conservation.



Andrew Riddell

23 September 2019