

**BEFORE THE ENVIRONMENT COURT
I MUA I TE KOOTI TAIAO O AOTEAROA
TĀMAKI MAKĀURAU ROHE**

IN THE MATTER: of the Resource Management Act 1991

AND

IN THE MATTER: of 14 appeals pursuant to clause 14 of the
First Schedule to the Act

BETWEEN:

TAURANGA CITY COUNCIL
(ENV-2018-AKL-000308)

MERCURY NZ LIMITED
(ENV-2018-AKL-000313)

WHAKATANE DISTRICT COUNCIL
(ENV-2018-AKL-000315)

TRUSTPOWER LIMITED
(ENV-2018-AKL-000316)

OJI FIBRE SOLUTIONS (NZ) LIMITED
(ENV-2018-AKL-000317)

TE RUNANGA O NGĀTI AWA
(ENV-2018-AKL-000318)

MOTITI ROHE MOANA TRUST
(ENV-2018-AKL-000319)

NGĀTI MAKINO HERITAGE TRUST
(ENV-2018-AKL-000320)

HORTICULTURE NEW ZEALAND
(ENV-2018-AKL-000322)

**THE ROYAL FOREST & BIRD
PROTECTION SOCIETY OF NEW
ZEALAND INC**
(ENV-2018-AKL-000323)

**FISH & GAME COUNCIL (EASTERN
REGION)**
(ENV-2018-AKL-000328)

**NGĀTI PIKIAO ENVIRONMENTAL
SOCIETY & OTHERS**
(ENV-2015-AKL-000331)

CNI IWI LAND MANAGEMENT LIMITED
(ENV-2018-AKL-000333)

QUAYSIDE PROPERTIES LIMITED
(ENV-2018-AKL-000340)

AND: VARIOUS INTERESTED PARTIES
Section 274 Parties (see Attachment B)

AND: BAY OF PLENTY REGIONAL COUNCIL
Respondent

**FIRST REPORTING MEMORANDUM OF COUNSEL FOR THE RESPONDENT
PROPOSED PLAN CHANGE 9 (REGION WIDE WATER QUANTITY) TO THE OPERATIVE
BAY OF PLENTY REGIONAL NATURAL RESOURCES PLAN**

23 January 2019

CooneyLeesMorgan
.....

247 Cameron Road
P O Box 143
TAURANGA
Telephone: (07) 578 2099
Facsimile: (07) 578 1433
Partner: M H Hill
Associate: R M Boyte

MAY IT PLEASE THE COURT:

Introduction

1. Proposed Plan Change 9 (Region Wide Water Quantity) to the Operative Bay of Plenty Natural Resources Plan (**PC 9**) is the first step in a two stage approach to improving the rules for water quality and quantity management in the Bay of Plenty, and in doing so to give full effect to the National Policy Statement for Freshwater Management (**NPSFM**).
2. The first stage is PC 9, involving an update to the region-wide water quantity planning framework that will apply to waterbodies throughout the region and guide the development of the sub-regional catchment plans.
3. The second stage is to develop the sub-regional catchment plans through the Water Management Area (**WMA**) processes that will contain objectives, policies, rules and limits applying to each Area and / or Freshwater Management Units within each Area. Some of these processes are underway.
4. Five Commissioners, comprising two Councillors and three Independent Commissioners, heard submissions and made recommendations that were adopted by the Regional Direction and Delivery Committee on 18 September 2018 (**Decision**).
5. Fourteen appeals have been lodged against the Decision. A number of interested parties have joined the appeals.
6. This first Reporting Memorandum is filed by counsel for Bay of Plenty Regional Council (**Council**) in accordance with the Court's first case management directions dated 29 November 2018.
7. The Court directed the Council to, after consulting with all parties, file and serve a memorandum which:
 - (a) Proposes a topic structure for the efficient case management of the proceedings and identifies the relationship between the topics, appeals and case parties;
 - (b) Identifies those topics and appeals that may conveniently be case managed or mediated together; and
 - (c) Identifies any preliminary legal issues that may need to be addressed prior to mediation.

Preliminary Legal Issues

8. There are no preliminary legal issues identified by Council or the other parties sought to be determined at this stage.

Proposed Topic Structure and Case Management

9. Council has worked through the appeals and identified a proposed topic structure for case management purposes. There are a number of appeal points which are interrelated. Appeal points may relate to more than one topic. This interrelationship has been taken into account and an inclusive approach adopted by Council. It may be that further topics are identified during the process or appeal points re-allocated amongst topics once relief is refined or better understood.
10. Council has circulated a proposed topic structure to the parties both prior to and following Christmas and has received and incorporated feedback from a number of parties. Some parties did not respond.
11. Council proposes 12 topics. Related topics have been grouped into four groups. The groups and topics are set out below.
12. Council has commenced direct discussions with appellants. These discussions have been constructive and all parties Council has met with have agreed that further discussions prior to Court-assisted mediation would be worthwhile.
13. Council therefore seeks further time to engage directly with the parties, including through multi-party workshops, prior to topics being set down for Court-assisted mediation. This should allow for resolution of less contentious appeal points and, where this is not possible, refinement or better definition of relief for mediation.
14. Council respectfully proposes the following timing and approach:
 - (a) All initial meetings with Appellants to be completed by the end of February 2019. Council will work with those Appellants who are yet to fully define their relief to do this in advance of any wider party discussions;
 - (b) Multi party discussions or workshops to be held during March and April 2019, starting with Group 1 (so that any relationships between the relief under those topics and others can be identified and addressed where necessary within those other topics) and then Groups 2, 3 and 4;
 - (c) A further Court report to be filed by Friday 10 May 2019 identifying:

- (i) Appeal points that have been resolved and will be the subject of draft consent documents;
 - (ii) Appeal points that are subject to an agreement in principle, pending the resolution of other related appeal relief;
 - (iii) Appeal points that have not been resolved and will need to be the subject of Court-assisted mediation; and
 - (iv) Any legal issues that have been identified by the parties as requiring determination prior to mediation.
15. The proposed groups and topics are set out below. A number of parties have joined the appeals as interested parties and those parties are set out in **Attachment A** under the relevant topic and appeal.

Group 1

Topic 1 – Māori Values and Relationships

16. Four appellants, Ngāti Makino Heritage Trust (**Ngāti Mākino**), The Trustees of the Motiti Rohe Moana Trust (**MRMT**), Te Rūnanga o Ngāti Awa (**Ngāti Awa**) and Tauranga Moana & Others have lodged appeals seeking a number of amendments to PC 9 to provide greater recognition and provision for Maori values and relationships in the setting of flows and limits and in resource consent decisions.

Topic 2: Governance and Decision-Making

17. MRMT, Ngāti Mākino, Tauranga Moana & Others, and Ngāti Awa seek a number of amendments to PC 9 that seek to recognise and operationalise the role of iwi and hapū as decision-makers and partners in planning and consents.

Topic 3: Cultural Use and Economic Development

18. Ngāti Makino and Tauranga Moana & Others specifically seek provision for an iwi and hapū allocation of water and / or setting aside of a portion of allocable flow to iwi and hapū for cultural purposes.

Topic 4: Tāngata Whenua General

19. This topic relates to specific relief sought by two appellants, Ngāti Awa and Tauranga Moana & Others, based on concerns relating to recognition of and provision for tāngata

whenua. This relief includes a reduction in scope of PC 9 based on procedural and substantive concerns and further work to address these issues.

Group 2

Topic 5: National Policy Statement for Freshwater Management, Planning Approach, and Water Management Areas (NPSFM, Planning Approach, and WMAs)

20. Four appellants seek amendments to PC 9 to ensure consistency with the National Policy Statement for Freshwater Management (**NPSFM**), including to incorporate provisions relating to water quality and to use NPSFM-consistent terminology. Amendments are also sought to the provisions guiding development of the Water Management Area sub-catchment regional plans.

Group 3

Topic 6: Unauthorised Takes

21. Five appellants (Trustpower Limited, Royal Forest and Bird Protection Society of New Zealand Inc (**Forest & Bird**), Ngāti Awa, Horticulture NZ and Oji Fibre Solutions (NZ) Limited) raise concerns with the provisions in PC 9 relating to the regularisation of existing unauthorised takes and seek amendments to the same.

Topic 7: Renewable Electricity

22. The majority of issues raised under this topic relate to the way various provisions in PC 9 apply to existing hydroelectric power schemes and the waterbodies in which they are located. Trustpower Limited, CNI Iwi Land Management, Ngāti Awa and Tauranga Moana & Others seek relief relating to these provisions.
23. In the context of the Rangitāiki River in particular, there is a relationship between these provisions and those relating to unauthorised users (dairy). As a result there will be a need for multi party discussions across these topics and for this reason they are proposed to be grouped together.
24. Mercury NZ Limited also seeks a new policy to recognise the benefits of the take and use of water related to geothermal resources which is proposed to be case managed under the Renewable Electricity topic.

Group 4

Topic 8: Limits, flows, levels and over-allocation

25. Horticulture NZ, Trustpower Limited, Forest & Bird, Tauranga City Council, Ngāti Makino, Tauranga Moana & Others, Ngāti Awa and MRMT seek a range of relief relating to limits, flows, water levels and over-allocation in PC 9, including amendments to existing provisions and/or the addition of new provisions. This includes amendments to Schedule 15 which sets out the Method for estimating surface water and groundwater allocation limits.

Topic 9: Rules, resource consent matters and schedule 7

26. Trustpower Limited, Forest & Bird, Whakātane District Council, Ngāti Awa, Ngāti Makino, Horticulture NZ, Tauranga City Council, and Tauranga Moana & Others seek a range of amendments to existing provisions and/or new provisions providing guidance to decision-makers on resource consent applications, including Schedule 7 Reasonable and Efficient Use Criteria.

Topic 10: Municipal Water Supplies

27. Tauranga City Council and Whakātane District Council have appealed PC 9 seeking greater certainty and priority for municipal water supplies and provision for future urban growth. Horticulture NZ seeks the “unbundling” of municipal water supplies so that priority is not afforded to those parts of the supply which are not domestic in nature.

Topic 11: Rootstock Survival Water

28. Horticulture NZ seek greater recognition in PC 9 of the benefits of providing water for horticulture and amendments relating to the taking of rootstock survival water in times of low flow or aquifer levels. Eastern Fish and Game seek greater specificity and controls on the taking of this and other water when there is a shortage of water.

Topic 12: Transfer of Water Permits

29. Tauranga Moana & Others and Ngāti Awa seek greater consideration of the potential impact of transfer of water permits on Māori values and relationships, and on Māori land.
30. Quayside Properties Limited and Trustpower Limited seek amendments to WQ P23 which guides decision making on applications to transfer water permits.

Directions Sought

31. As noted above, Council seeks a reasonable opportunity to continue discussions directly with the parties prior to any mediations being scheduled.
32. A further reporting date of **10 May 2019** is proposed, at which time Council would identify:
 - (a) Appeal points that have been resolved and will be the subject of draft consent documents;
 - (b) Appeal points that are subject to an agreement in principle, pending the resolution of other related appeal relief;
 - (c) Appeal points that have not been resolved and will need to be the subject of Court-assisted mediation; and
 - (d) Any legal issues that have been identified by the parties as needing determination prior to mediation.
33. Council also respectfully seeks a direction confirming the topic structure proposed in **Attachment A** to this memorandum, subject to any amendments the Court considers appropriate.

DATED 23 January 2019



.....
M H Hill / R M Boyte

Counsel for the Bay of Plenty Regional Council.