

# Strategy and Policy Committee

## Item Circulated under Separate Cover for:

**Strategy and Policy Committee Meeting** to be held in  
**Mauao Rooms, Bay of Plenty Regional Council Building,**  
**87 First Avenue, Tauranga** on:

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**Tuesday, 18 February 2020 commencing at 9.30 am**

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Fiona McTavish  
Chief Executive  
13 February 2020





# Strategy and Policy Committee

## Membership

<b>Chairperson</b>	Cr Paula Thompson
<b>Deputy Chairperson</b>	Cr Stuart Crosby
<b>Members</b>	All Councillors
<b>Quorum</b>	Seven members, consisting of half the number of members
<b>Meeting frequency</b>	Six weekly rotation between committee meetings and strategic sessions

## Purpose

- Inform the strategic direction for the Council and implement through approved planning and policy frameworks.
- Identify regional issues resulting from emerging trends, providing thought leadership on matters of regional significance, analysing implications and developing a strategic response.

## Role

- Develop, implement and review best practice strategy, policy and planning framework for decision making which enables connection across committees of Council.
- Consider emerging environmental issues and provide advice on the implications for effective resource management within the region.
- Inform Council's strategic direction, including prioritisation and policy responses.
- Enhance awareness and understanding of emerging issues and trends relating to meeting Councils strategic direction.
- Develop Council's position on regionally significant issues and provide guidance on sub-regional and regional strategy matters such as spatial planning and SmartGrowth.
- Approve submissions on matters relating to the committee's areas of responsibility that are not delegated to staff.
- The provision of governance oversight into the development and review of policies, plans, and strategies.

- Approve statutory and non-statutory plans, strategy and policy other than those required to be adopted and consulted on under the Local Government Act 2002 in association with the long-term plan or developed for the purpose of the local governance statement.
- Develop, review and approve Council's position on regional economic development.
- Consider any issues delegated by Council that have a regional, environmental, social or economic focus.
- Develop and review bylaws.
- Delegate to hearings commissioners under section 34A of the Resource Management Act 1991 to exercise the powers, functions duties in relation to any authorities that have been delegated by Council to the committee.

## **Power to Act**

To make all decisions necessary to fulfil the role and scope of the committee subject to the limitations imposed.

The Strategy and Policy Committee is not delegated authority to:

- Approve the Regional Policy Statement and bylaws;
- Review and adopt the Long Term Plan and Annual Plan;
- Develop and review funding, financial, Risk and Assurance Policy and frameworks;
- Approve Council submissions on Maori related matters;
- Develop, approve or review non statutory policy for co-governance partnerships.

## **Power to Recommend**

To Council and/or any standing committee as it deems appropriate.

## Public Forum

1. A period of up to 15 minutes may be set aside near the beginning of the meeting to enable members of the public to make statements about any matter on the agenda of that meeting which is open to the public, but excluding any matter on which comment could prejudice any specified statutory process the council is required to follow.
2. The time allowed for each speaker will normally be up to 5 minutes but will be up to the discretion of the chair. A maximum of 3 public participants will be allowed per meeting.
3. No statements by public participants to the Council shall be allowed unless a written, electronic or oral application has been received by the Chief Executive (Governance Team) by 12.00 noon of the working day prior to the meeting and the Chair's approval has subsequently been obtained. The application shall include the following:
  - name of participant;
  - organisation represented (if any);
  - meeting at which they wish to participate; and matter on the agenda to be addressed.
4. Members of the meeting may put questions to any public participants, relevant to the matter being raised through the chair. Any questions must be asked and answered within the time period given to a public participant. The chair shall determine the number of questions.



# Item Circulated under Separate Cover

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Recommendations in reports are not to be construed as Council policy until adopted by Council.

## Report

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(Region-wide Water Quantity Plan Change) 11**

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**Please note:** the above revised title of the item, which was listed as item '8.6, Proposed Plan Change 9 (Region-wide Water Quantity Plan Change) Update' in the agenda published on 11 February 2020.





# Report



**Report To:** Strategy and Policy Committee

**Meeting Date:** 18 February 2020

**Report From:** Namouta Poutasi, General Manager, Strategy & Science

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## **Consideration of Option to Withdraw Proposed Plan Change 9 (Region-wide Water Quantity Plan Change)**

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### **Executive Summary**

The Proposed Plan Change 9 (Region-wide Water Quantity Plan Change – PPC9) was developed to improve the regulation and administration of fresh water (quantity) takes across the Bay of Plenty Region. It was primarily concerned with “how much” surface and groundwater could be taken and proposed strict limits on takes. Council decisions on PPC9 were appealed and by 21 November 2018 fourteen appeals and 26 parties had subsequently filed notices under section(s) 274 of the Resource Management Act 1991. Staff have been working with the appellants and s274 parties since, and have attended three days of court facilitated mediation.

The PPC9 Appeals Subcommittee met on 5 February and considered feedback from the appellants and s274 parties to a PPC9 markup document prepared by staff following mediation. On the basis that parties remained some way apart on key issues and given pending national policy changes, the subcommittee directed that staff prepare this paper analysing the options of withdrawing PPC9 in full.

This paper considers a range of factors relevant to withdrawing PPC9 including:

- changing national policy direction
- implications on consents and compliance functions already underway
- financial and staff prioritisation implications
- capacity and capability implications for Maori and wider community
- environmental implications
- the development of new future proofed actions and activities planned following gazettal of the new National Policy Statement for Freshwater (NPSFM) in July 2020
- Māori partnership/engagement planned

A challenge now is that a number of key matters remain unresolved and are unlikely to be settled out of court. Some matters (such as Te Mana o te Wai) featured prominently in the draft NPSFM and may be a particular policy focus in the NPSFM 2020, due for gazettal in July.

Considering that key national policy direction will be gazetted in July 2020, the manageable implications for consents and compliance, the significant financial and resource implications for appellants of potentially protracted environment court proceedings, and the limited usefulness of any court decisions given the interim nature of PPC9 (and likely rework after a

decision is given), it is recommended that PPC9 be withdrawn.

## **Recommendations**

**That Strategy and Policy Committee:**

- 1 Receives the report, Consideration of Option to Withdraw Proposed Plan Change 9 (Region-wide Water Quantity Plan Change);**
- 2 Agrees to withdraw PPC9 in full;**
- 3 Endorses staff working closely and, where practicable, in partnership with tangata whenua in freshwater management and policy development.**

### **1 Purpose**

This report gives an update to the Strategy and Policy Committee on developments with Proposed Plan Change 9 (PPC9 - Region-wide Water Quantity) and recommends it be withdrawn under Schedule 1 (clause 8D) Resource Management Act.

The paper provides background contextual information, a brief overview of key appellant issues, changing national policy direction, implications on consents and compliance, some financial and staff prioritisation implications and discusses capacity and capability implications for Maori and the wider community.

Staff have advised parties of the intent to prepare this item and parties have now vacated mediation scheduled for February 13 and 14.

### **2 Background**

PPC9 was developed to improve the regulation and administration of fresh water (quantity) takes across the Bay of Plenty Region. It was primarily concerned with “how much” surface and groundwater could be taken and proposed strict limits on this to address issues of inadequate limits to water takes, and poor regulatory framework.

When PPC9 was prepared, the region was facing significantly increased demand for water. The Water Sustainability Strategy: Western Bay of Plenty Sub-Region predicted that water demand in this already highly allocated area would almost double in the period 2005 – 2055. A report to Bay of Plenty Regional Councils Operations, Monitoring and Regulation Committee in June 2013 identified that many of the regions ground and surface water bodies were allocated at levels that exceeded the default provisions in the RWLP (or for groundwater a Proposed National Environmental Standard on ecological flows and water levels). A need for change was also highlighted in a review undertaken by Opus consultants.

Proposed Plan Change 9 was intended to revise and strengthen the existing framework for allocating water. It set out to address immediate problems and begin the implementation of the National Policy Statement for Freshwater Management (NPS) by prescribing set allocation limits. PPC9 reinforced existing interim region-wide allocation limits for water allocation and establishes a raft of new policy – including a framework to support Water Management Area (WMA) processes. Under PPC9 it was envisaged that in subsequent plan changes each WMA would review these limits and determine

more refined minimum flows, water levels and allocation limits for water resources in their area. It was expected that WMA processes might also determine how to phase out existing over allocation and identify specific methods to improve the efficiency of allocation and use.

Since PPC9 commenced, Council has substantially refined and improved the freshwater accounts used to allocate freshwater. Teams continue to work towards improving data management systems, get telemetered metering in place and develop improved models to understand the resource status. Conversations with tangata whenua have matured and expectations are more fully understood. Industry and wider community interest in freshwater have grown. At the same time, national policy has evolved – particularly in respect of the role tangata whenua should have in fresh water management.

PPC9 has been many years in the making. It was extensively consulted on, particularly with tangata whenua who very early on were involved in its development. Appendix 4 provides a summary of the main engagement with Māori to develop PPC9. At the time it was developed, the focus was very much of defining 'limits' and providing broad policy direction on a raft of other matters. PPC9 was never intended to fully implement the NPSFM.

As noted, and central to the current situation, PPC9 was originally envisaged as being part of a two stage process designed to 'hold the line' prior to more detailed limit setting with local communities across 9 catchment or Water Management Areas. With the progress of time and the convergence of practise towards many of the matters dealt with in PPC9 (metering, water efficiency, near-absolute limits), and changing national policy, the immediate value of PPC9 has diminished and, in the face of continued opposition, means PPC9 can be withdrawn with limited impact.

## **2.1 Timeline Overview and Key Milestones**

PPC9 was notified on 18 October 2016. A hearings panel of Andrew Fenemor, Antoine Coffin (chair), Rauru Kirikiri, Cllrs Jane Nees and Paula Thompson was established. Hearings commenced in March 2018. The Regional Direction and Delivery Committee adopted the Hearing Panel recommendations at its September 2018 meeting. Council's decision was publicly notified on 9 October 2018.

Fourteen appeals were received when the appeal period closed on 21 November 2018. 26 parties subsequently filed notices under section(s) 274 of the Resource Management Act 1991 to join these appeals.

Staff have been working with the appellants and s274 parties to resolve the appeals ever since. Court assisted mediation has been unable to reach the consensus needed to resolve key concerns.

On Wednesday 5 February the Plan Change 9 Appeals subcommittee met and determined to recommend the withdrawal of PPC9.

Prior to this, pre-mediation discussions were held with appellants and s274 parties on 18 March, 6 May and 4 and 5 June 2019. An independent planner had helped some of the tangata whenua appellants produce markup versions of PPC9 showing their requested remedies. Post pre-mediation discussions, the Appeals subcommittee had met on 2 July, 7 and 13 August 2019 and directed staff to prepare a revised "council response to appeals" mark-up version of the PPC9 document incorporating many of changes requested to date which was provided for appellants and s274 parties to

consider. This subsequently became a resource used in Environment Court led mediation.

The Appeals subcommittee has previously considered the relative merits of progressing or withdrawing PPC9. At its 11 September 2019 meeting the subcommittee questioned whether, based on the proposed National Policy Statement Freshwater Management (NPSFM) and proposed National Environment Standard (NES) (which has been recently consulted on) it made sense to continue. In particular, that discussion centred on the costs to defend PPC9 when the Government was signalling big policy changes and an accelerated time frame to deliver improved water quality. At that time the subcommittee saw merit in continuing with PPC9, but parties were (and have been frequently) advised of the need to make progress and avoid costly court action otherwise Council may need to consider withdrawing PPC9.

Environment Court facilitated mediation was held on 4, 5 and 16 December 2019 (further mediation scheduled for 13 and 14 February 2020 has been cancelled). Following these mediations a “response to mediations” mark-up version of PPC9 was prepared by staff (it was not at that stage subcommittee ‘approved’) provided to appellants and s274 parties for feedback prior to the Appeals subcommittee meeting on 5 February to confirm their position. Parties used a variety of means to provide feedback, generally attaching comments to a supplied PPC9 document, noting specific points or providing a list of provisions with comments. The comments are summarised in section 4 and detailed further in Appendix 2 according to topic.

## **2.2 The Appeals Subcommittee Recommendation**

Based on feedback provided by the appellants and s274 parties, on 5 February 2020 the PPC9 Appeals Subcommittee considered mediation on 13 and 14 February unlikely to resolve matters. In light of this, and pending signalled government policy changes, the subcommittee resolved that the Strategy and Policy Committee should consider withdrawing PPC9 in full. Their recommendation follows:

### Resolved

*That the Region-wide Water Quantity - Proposed Plan Change 9 Appeals Subcommittee:*

- 1 Receives the report, Region-wide Water Quantity - Plan Change 9 Mediation Outcome Decisions Report;*
- 2 Agrees that staff prepare a report for the Strategy and Policy Committee meeting of 18 February 2020 to consider withdrawing Proposed Plan Change 9 in full and considers how to better involve tangata whenua in the management of fresh water;*
- 3 Agrees that following this meeting, staff proceed to advise parties and the Court of the upcoming Strategy and Policy Committee consideration.*

### Reasons for decisions

- Fundamental differences of opinion remain on key issues which are unlikely to be resolved without proceeding to court*
- Resolution of outstanding appeals is unlikely to occur until after the National Policy Statement for Freshwater Management is gazetted and implementation underway*
- Continuing to pursue the resolution of the appeals would therefore be an inefficient use of resources, given new national direction on fresh water is imminent*
- Future processes and associated plan change(s) following the gazettal of the NPSFM will enable better integration of water quality and water quantity and provide greater clarity in relation to Te Mana o Te Wai, which has been a key issue in the appeals.*

### 3 Summary of Key Issues for PPC9 Appeals

Central to the committee’s recommendation that withdrawal be considered was failure to achieve consensus on a number of important PPC9 matters. The following table summarises the current status of PPC9 issues (red indicates issues that remain most in dispute):

Issue	Status
<p><b>Tangata whenua matters</b></p> <ul style="list-style-type: none"> <li>● The incorporation of Te Mana o te Wai (TMOTW) in PC9. Sought greater recognition of Te Tiriti.</li> <li>● Provision of cultural flows</li> <li>● Associated amendments (including consent timeframes and activity status).</li> </ul>	<p>These matters remain a core area of tension.</p> <p>TMOTW is a core concept under NPSFM (2017) and has been signalled for further consideration under the proposed NPSFM 2020.</p> <p>Unfortunately, recent feedback suggests this topic cannot be settled out of court.</p>
<p><b>The Planning Approach/Water Management Areas</b></p> <ul style="list-style-type: none"> <li>● Details included in the plan change about ‘next steps’.</li> <li>● Balancing social and economic matters (ties in with TMOTW)</li> <li>● Proposed simplification of some provisions.</li> </ul>	<p>Parties were generally in agreement about current national policy uncertainty.</p> <p>Broadly, parties disagreed on how (or if) to balance social, economic matters - versus TMOTW.</p> <p>The simplification of plan provisions was disputed though is considered solvable.</p>
<p><b>Renewable electricity</b></p> <ul style="list-style-type: none"> <li>● Concerns policies supporting renewable electricity generation.</li> </ul>	<p>Key parties involved in this dispute disagree. In question is the extent of priority and whether PPC9 should defer this to subsequent plan changes.</p>
<p><b>Limits, flows, levels and over allocation</b></p> <ul style="list-style-type: none"> <li>● Concerns WQ P10 ‘generally decline’ provision and WQ P11 (consider granting).</li> <li>● These are ‘core’ parts of PPC9.</li> <li>● This topic concerns how “flexible” interim PPC9 provisions can be.</li> </ul>	<p>Although parties broadly agreed that there should be some exceptions to “generally decline” it is unclear whether this will settle. In particular, there is a reluctance from some parties to further weakening PPC9 which was sold to them on the basis it would be “firm”.</p>
<p><b>Rule resource consent matters and schedule 7</b></p> <ul style="list-style-type: none"> <li>● The need for applicants to undertake cultural flow assessments and the duration of consents pending that work were at issue.</li> <li>● Schedule 7 determined “efficient” water use and has been challenged.</li> </ul>	<p>Parties are divided on the need to shorten consent terms or provide for reviews pending the completion of cultural flow assessments. There was broad agreement on the term “cultural flow” (although some tangata whenua parties still argue this should include cultural use) but not on rules using it.</p>

<p><b>Unauthorised dairy</b></p> <ul style="list-style-type: none"> <li>This primarily concerned the activity status of unlawful dairy shed water takes.</li> </ul>	<p>This issue appears to be largely agreed with unauthorised dairy proposed to be discretionary (or restricted discretionary).</p>
<p><b>Municipal water supplies</b></p> <ul style="list-style-type: none"> <li>Municipals water suppliers sought to retain their policy advantage.</li> </ul>	<p>There was broad support though some disagreement on detail. The municipal's commitment to determining cultural flows was welcomed. The treatment of non-municipal uses attached to municipal schemes was generally agreed.</p>
<p><b>Rootstock survival water</b></p> <ul style="list-style-type: none"> <li>Concerns guaranteeing a small proportion of low flows is available to ensure permanent crop death.</li> </ul>	<p>This topic was largely agreed, though staff have reservations about the technical basis of this agreement.</p>
<p><b>Transfer</b></p> <ul style="list-style-type: none"> <li>Concerns how or if PC9 should contain provisions encouraging water transfer between users.</li> </ul>	<p>There was some disagreement as to whether we should include transfer provisions.</p>

#### 4 NPSFM Next Steps

The Government released their substantial Essential Freshwater policy package for public consultation on 5 September 2019. The package seeks to halt declining freshwater quality and ecosystem health, and to see it “materially improving within a generation”.

It's purpose is to stop further degradation and reverse past damage of New Zealand's freshwater resources, waterways and ecosystems including to:

1. Set and clarify policy direction
2. Raise the bar for ecosystem health
3. Improve farming practices, particularly those posing a higher risk to water bodies
4. Support delivery of safe drinking water
5. Better manage stormwater and wastewater

Although BOPRC has been closely involved in the Essential Freshwater program, it is unclear what the final version gazetted will contain. There has been considerable discussion on enhancing the prominence and clarity of Te Mana o te Wai, including further related water quality attributes and dramatically shortening the time we have to implement the NPSFM. However, at the time of preparing this report, there is absolutely no indication of which provisions look set to remain.

Cabinet has said it will make decisions on Essential Freshwater in May 2020. Until then staff can only speculate as to the final requirements.

Notwithstanding changes to the NPSFM (which were not anticipated when PPC9 commenced) it was always intended to review how the RNRP deals with freshwater in the near-term (within 2-3 years) under upcoming more detailed (NPSFM



implementation) plan changes. For example, Plan Change 12 (Rangitaiki, Kaituna, Pongakawa, Waitahanui) was expected to have more complete water quantity provisions for that area.

PPC9's "interim" nature was discussed with appeal parties prior to and during mediation. One appeal point led staff to consider which (if any) parts of PPC9 would endure. In light of impending national policy and law changes it was considered unlikely that any particular provision would remain untouched under upcoming plan changes to implement the NPSFM.

This context has weighed heavily on all parties. On one hand, most acknowledge the significant change afoot and have accepted PPC9 provisions will not endure. But on the other hand, many have a genuine concern that PPC9 could set a precedent. Thus, there is an awkward reluctance to abandon specific appeal remedies.

At the time of preparing this report the Government was working to the following NPSFM timeline.

May 2020	Cabinet Decisions released
July 2020	NPSFM and NESF gazettal <ul style="list-style-type: none"> <li>• NPSFM delivery timeframe will be confirmed</li> <li>• NES requirements will take effect</li> </ul>

The S&P Committee will be meeting to consider Council's revised fresh water work programme as follows:

June 2020	Strategy and Policy Committee Workshop to discuss preliminary work programme and implementation plan
August 2020	Strategy and Policy Committee Meeting to approve work programme and implementation plan

## **5 Working With Tangata Whenua**

In its recommendation to consider withdrawal the Appeals Subcommittee recognised the considerable importance of freshwater and any PPC9 decision to tangata whenua. One of the key concerns raised by the subcommittee was that this decision might erode goodwill or be perceived as a backward step.

Staff wish to take advantage of the momentum from PPC9 and intend to coordinate a meeting with the tangata whenua (Group 1) appellants (individually or as a collective) to progress discussions that commenced via PPC9. Options being considered include the development of an engagement hub and/or reference groups resourced to support Council to implement the NPSFM. Staff have committed to progress work in the tangata whenua space with urgency to ensure momentum gained through PPC9 is not lost, and any freeing of resources that might result from the committee decision are made the most of.

It is important to acknowledge that the BOP cultural landscape is diverse and characterised by groups at different levels of capacity. Staff intend commencing early discussions with tangata whenua (where relationships need establishing and/or strengthening) to coordinate a more responsive approach to engagement with these iwi – perhaps modelled on agreed ways of working with those further ahead in their thinking. These discussions will emphasise a transition to a working relationship centred on the immediate need to better understand the fresh water resource (and thus key management needs) and build mutual capacity. The hope would be to rapidly progress discussions from “how” we work with tangata whenua to more applied conversation about practical work required to help tangata whenua as kaitiaki and Council to better manage fresh water. For example, there have been discussion of preparing inventories of cultural values and working on cultural flow assessments – with ‘ownership’ of data/information to be determined when the question arises.

It should also be noted that Councils positioning and timing to enable iwi participation in the Eastern Bay of Plenty is heavily influenced by the Treaty settlement process. Some of these processes are unique in terms of the role iwi leadership might have in fresh water management. Staff are currently working alongside iwi and key Crown agency partners to identify opportunities for council to support the position of fresh water outcomes within the Treaty settlement process and to understand and anticipate the role of council post settlement.

## 6 Impact Analysis

Overall consideration of effects of withdrawing PPC9 on Council’s consents and compliance responsibilities, the environment, Council finances and resourcing, and Maori are shown below. The implications for Council, resource users and Maori are further evaluated against key PPC9 provisions in Appendix 2.

### 6.1 Options considered

#### 6.1.1 Partial withdrawal

Partial withdrawal of PPC9 would entail removing controversial aspects and retaining those that are not. The matters considered more readily resolved and comments on retaining them (and withdrawing other parts) is given below.

<p><b>Unauthorised dairy</b></p> <p>This primarily concerned the activity status of unlawful dairy shed water takes.</p>	<p>The unauthorised dairy rule cannot be separated from considerations of Te Mana O Te Wai and is intertwined with a consideration of Hydro Electric Power. It is unclear how some parties would take a proposal to remove other restrictive provisions in PPC9 and retain a permissive provision like this as that would appear to fly in the face of the purpose of PPC9.</p>
<p><b>Municipal water supplies</b></p> <p>Municipals water suppliers sought to retain their policy advantage.</p>	<p>The policy advantage afforded municipals is gained via several interrelated objectives and policies. The municipal discussion is also impacted by TMOTW, carries over into consideration of schedule 7 and may also be relevant to a consideration of consent durations. None of these related matters are settled.</p>
<p><b>Rootstock survival water</b></p>	<p>Rootstock survival water is relatively discrete but</p>

Concerns guaranteeing a small proportion of low flows is available to ensure permanent crop death.	cannot be agreed without considering the overall decision-making framework. Again, the extent to which water is made available at the lowest of flows to prevent crops from dying needs to be considered with the overall approach to TMOTW.
<b>Transfer</b> Concerns how or if PC9 should contain provisions encouraging water transfer between users.	Although the removal of transfer provisions was largely agreed (noting some disagreements remained) it was a removal and thus no provision would remain.

As noted above, partially withdrawing PPC9 is considered infeasible because:

1. Tangata whenua concerns remain key. These cut across almost all PPC9 provisions. Removing all but the least controversial of these provisions would be an affront to tangata whenua (for whom the presence of these provisions is some comfort) and would risk inconsistencies creeping into the plan change.
2. Integrated management would not be achieved with only the least troubling parts of PPC9 remaining. For example, PPC9 would be deficient if numerical limits remained (35% RAAR and 90% Q5) but objective and policy support was removed.
3. Parties to PPC9 have invested a lot of time and resources so far. Partial withdrawal could mean favouring some groups and interests over others (by virtue of their being agreed). This could be particularly polarising.
4. While PPC9 remains appeals could be progressed.
5. Partial withdrawal by other councils has lead to litigation due to the uncertainty created by the operation of the parts that remain

### 6.1.2 Continuing to Mediate

As noted earlier, a number of issues remain unresolved and further mediation is considered unlikely to help and would give rise to considerable avoidable costs.

All Council decisions carry risk. In this case, the potential risks associated with withdrawing PPC9 should be considered alongside the known risks of continuing with the PPC9 process. The risks of continuing with PPC9 include:

1. Almost certain of environment court hearings/action and associated costs.
2. Future planning processes, especially those involving tangata whenua, being frustrated by court processes that are unlikely to offer solutions.
3. Parties being forced into an adversarial situation with possible relationship impacts.
4. Court decisions being made that do not help in light of forthcoming NPSFM changes.

The key risks of withdrawing PPC9 are listed below:

Risk	Consequence	Likelihood	Risk score	Comment
Parties seek a judicial review	Moderate	Low	Low	Council is entitled to withdraw a plan

(of a decision to withdraw).				change any time prior to court hearings provided that it explains its reasons. It is very difficult to successfully judicially review a policy decision of Council. A judicial review case could be managed with little staff input and would be unlikely to impact the overall work program. The Court could not require Council to re-notify Plan Change 9.
Parties seek costs against Council.	Moderate	Low	Low	There is no legal obligation to pay costs upon withdrawal of a plan change. Any costs liability would relate to the appeals process and would require an order of the Environment Court. Legal advice is that this risk is low.
The decision could reflect poorly on Council.	Low	Moderate	Low	Circumstances outside of Council's control have led to the recommendation to withdraw. Council is acting in the public interest and with integrity.
There is a "gold-rush" for water in the interim.	Low	Moderate	Low	Council processes approximately 150 water consents pa. Most are discretionary. That situation is unlikely to change.

## 6.2 Implications for Maori

### 6.2.1 Statutory Obligations to Tangata Whenua

Council is subject to a large number of statutory obligations and duties towards tangata whenua. The Resource Management Act, 1991 recognises the principles of the Treaty of Waitangi and specifically requires the relationships tangata whenua have

with their special places to be protected. The Act also recognises that as kaitiaki tangata whenua have a special role in resource management – something that has been picked up more explicitly under the NPSFM 2014 (part D).

A summary of the key legal consideration is given in Appendix 3.

## **6.2.2 Key Considerations for Maori**

*Iwi have limited financial and human resources to invest in policy development.*

Iwi investment in PPC9 to date is proportionally substantial given their limited financial capacity compared to Council and other stakeholder groups. Regional policy development is one of many competing priorities for iwi region wide. This may result in some iwi having less financial capacity to invest in the next phase. Council's financial resources, while substantial compared to iwi, are also limited. These limitations for iwi and Council will, however, drive innovation and efficiencies to deliver the next phase of implementation.

*Mauri will continue to be degraded without the inclusion of cultural values and interests in the default operative limits.*

Te Mana o Te Wai (TMOTW) will not be adequately incorporated into decision making via the default operative limits. Iwi are concerned that Mauri will continue to be impacted. There was consensus (which included iwi appellants) that mauri can be encapsulated in TMOTW, although it is a distinct concept. However during PPC9 mediation their attempts to incorporate TMOTW into a plan where there is no consensus on what TMOTW means created difficulties. The withdrawal of PPC9 provides Council staff with time to have the crucial conversations with iwi, and the wider community, to develop an understanding of what TMOTW means for the Bay of Plenty Region. The next phase of implementation will provide a more fertile environment for these discussions to take place and for the regional community to define what TMOTW means for the region.

*Erosion of trust in Council and Council processes*

Iwi expectations have not been fully met through the PPC9 process to date, which may impact iwi trust in the Council and the policy development process. While this is unfortunate, it does provide an opportunity to be more innovative in how iwi and Council work together moving forward. The iwi engagement strategy is structured around enabling iwi leadership in this space. The withdrawal of PPC9 would provide Council officials with additional time to build trust and strengthen relationships to work together on a collectively accepted approach and to identify innovative ways in which to strengthen iwi leadership in this space.

*Increased tangata whenua apathy towards policy development process*

Some iwi appellants have expressed increasing apathy to the policy development process given their experience in PPC9. There is a risk that iwi may disengage from the next phase of policy development. While this is unfortunate, a decision to withdraw PPC9 would provide Council with additional time to strengthen relationships with iwi.

*Benefits in withdrawing PPC9*

Given the government's approach to fresh water and the likely gazetting of an amended NPSFM mid-year, there is now an opportunity to work with tangata whenua

on a more responsive approach through appropriate methods of engagement. The enhanced role that tangata whenua will have in the development of freshwater policies requires council to consider a different relationship with the Māori community.

Early discussions with tangata whenua will inform how they would like to participate in the process going forward. In particular there will be an expectation that Council will contribute to supporting and or building the capacity and capability of Resource Management Units or alternative iwi/hapū structures. In the case of Land Trusts and Incorporations, it is likely that these entities would have a direct interest in the preparation of freshwater policy where it affects their commercial interests.

Information already gathered from PPC9 will provide a baseline to identify gaps in information and where a more targeted approach may be required. In some cases this would focus discussions without having to begin from ground zero.

There is also an opportunity to form a collective engagement hub with PPC9 tangata whenua parties that would consider unresolved matters through the new NPSFM process. This would not restrict them to the matters relating to PPC9 and possibly expedite a broader approach to freshwater management inclusive of water quantity.

### 6.3 Impact on Submitters

Staff and/or legal counsel have either spoken to or otherwise communicated with all appellants and s.274 parties to discuss the recommendation to consider withdrawing PPC9. Broadly, appellants appear to be experiencing:

<b>Relief</b>	Several appellants said they were relieved by this development and said they felt they could now get on and work more positively on freshwater matters.
<b>Uncertainty</b>	Several appellants said they were not sure what the decision meant (for them, the environment). If a decision is made to withdraw PPC9, Council's reasons should assist in providing clarity.
<b>Disappointment</b>	Several parties - particularly those that were closer to settling their appeals, expressed disappointment - tempered in some cases with understanding of the national policy changes later in the year.

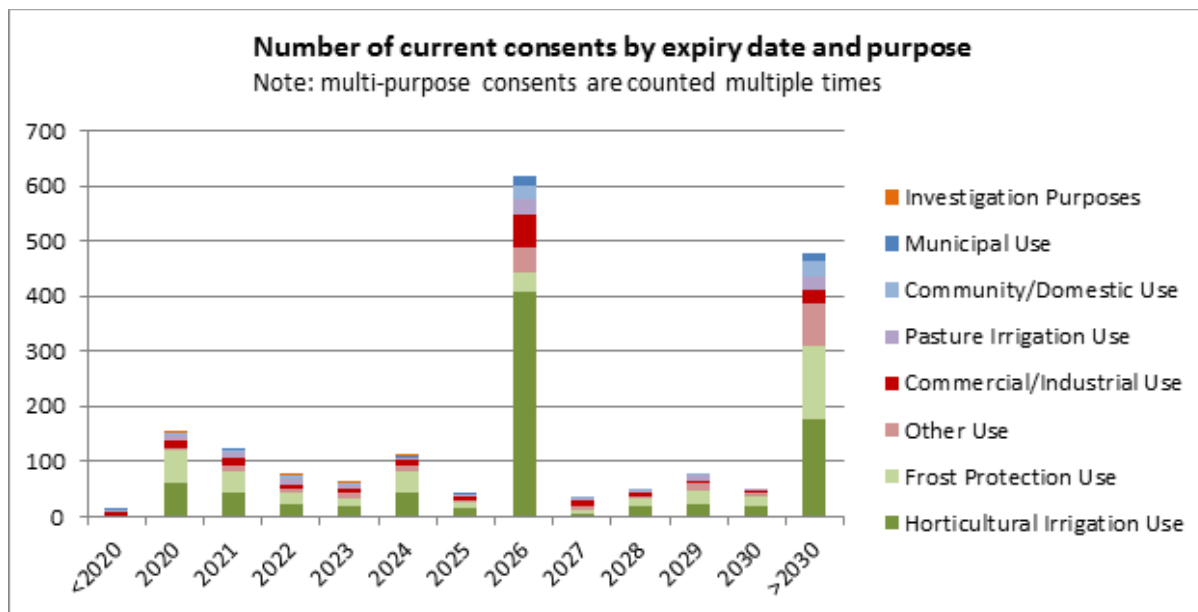
### 6.4 Impacts on the Wider Community

PPC9 is not well known beyond resource user groups. Staff consider the main public concern will be the implications for the environment, Council, resource users and Maori of withdrawing PPC9. This is assessed in above and in Appendix 2 (Consideration of implications for Council, resource users and Maori).

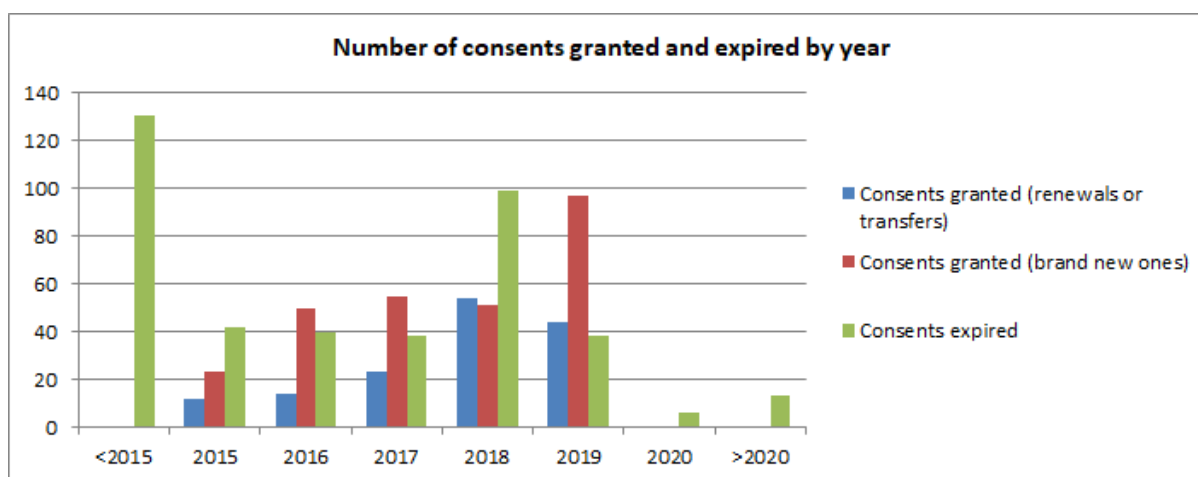
Potentially, the government may consider withdrawing PPC9 to be a backward step inconsistent with its desires to see a rapid improvement in freshwater quality under its essential freshwater program. However, as detailed elsewhere, should PPC9 be withdrawn there would be greater opportunities to build on progress achieved to date and more completely integrate its parts within a plan change (or plan changes) that fully meet NPSFM requirements.

## 6.5 Impacts on Consents and Compliance

If PPC9 is withdrawn then consent applications will need to be processed and decided under Rules 38 - 43 of the Regional Natural Resources Plan (RNRP). As shown in the following graphs, just over 100 freshwater take consents are considered by Council per annum.



The following gives a breakdown looking at consents by renewal or wholly new.



The differences between the two sets of rules are summarized in the following table.

Rule	PPC9	RNRP
Permitted Surface Water Take	15m <sup>3</sup> /day with registration and metering requirement	15m <sup>3</sup> /day
Permitted Groundwater Take	15m <sup>3</sup> /day for sites <5ha 35m <sup>3</sup> /day for sites >5ha	35m <sup>3</sup> /day

	with registration and metering requirement	
Water Takes (general)	Restricted Discretionary Activity if within allocation limits Discretionary Activity if exceeding allocation limits	Discretionary Activity
Waitahanui Stream takes (Schedule 7 of RNRP and rule 41A)	Restricted Discretionary Activity if within allocation limits. Discretionary Activity if exceeding allocation limits	Controlled Activity if within allocation limit. Discretionary Activity if exceeding allocation limits.
Renewal of municipal water supply takes	Controlled Activity	Discretionary Activity

It should be noted that the Waitahanui Stream is over-allocated so all consent applications from the stream will be considered Discretionary Activities. Accordingly there is no practical implication for the withdrawal of PPC9 in relation to new consent applications to take from the Waitahanui Stream.

The majority of recent water take applications are for volumes well in excess of the permitted activity volumes of the RNRP. The removal of the more stringent permitted activity volume in PPC9 (affecting groundwater takes on properties under 5ha) is not expected to have an appreciable effect in the interim.

PPC9 requires Permitted Activity takes to be registered and metered in certain circumstances. There is no equivalent in the RNRP. The lack of registration will make monitoring Permitted Activities more difficult.

PPC9 provides stronger policy than the RNRP for declining applications that exceed the interim water allocation limits. The RNRP requires efficient water use, avoidance of permanently or unsustainably lowering water levels or degrading water quality, identifies portions of rivers that are over-allocated in relation to hydroelectric power stations and considers most water takes as Discretionary Activities. The withdrawal of PPC9 will provide more opportunity for challenge (appeals) to consent decisions in over-allocated catchments.

The RNRP provides policy support for taking into account tangata whenua values and the current practice of consulting with tangata whenua for water take applications will continue if PPC9 is withdrawn.

Metering and monitoring requirements were explicit in PPC9 but will generally be included in resource consents processed under the RNRP.

Overall, the RNRP provides for water take applications to be processed as Discretionary Activities and therefore the consent officer's discretion is not limited. As a result, it may be slightly less efficient to administer consents under the RNRP but the same or similar outcomes are likely to be achieved under either scenario because a key factor will be a catchment's allocation status. This information sits outside of the plan.



## 6.6 Impacts on Consents Processed During PPC9

Section 104 of the Resource Management Act anticipates a situation whereby consents might need to be considered under proposed and operative plan provisions, which has been the case since PPC9 was notified on 18 October 2018. Section 86B of the Act sets out when rules in proposed plans have legal effect. All relevant consents issued since 18 October 2018 would be unaffected by a decision to withdraw PPC9 as they have been processed according to the requirements of the Act.

## 6.7 Impact on the environment

The potential impact of withdrawing PPC9 on the environment is a vital consideration that has been broadly considered in section 3.1 above. Importantly, allocation thresholds remain the same as those identified in PPC9, and the accounts and science underpinning these thresholds remain unchanged. The importance of operational activities including science, monitoring, compliance and the improved understanding of efficient allocation and use has been highlighted during PPC9 development and will continue. If the future plan change confirms that some water resources are over allocated, clawback is provided for in the RMA and specific provisions are likely to be included in future plan change(s). On balance, considering the interim nature of PPC9 and progress being made towards a more comprehensive plan change(s) any risk is considered minor.

## 6.8 Financial Implications

Council does not explicitly budget for Environment Court appeals. Once before the courts, costs are extremely difficult to contain.

PPC9 was notified in October 2016 but has not yet been heard by the court. As a result, external costs have been relatively low. Over the same period PPC10<sup>1</sup>, has been through the environment court but has still not been resolved. To date, PPC10 has cost about \$1.8M to advance (split between Council hearings and court). Using these figures as an example, more complex environment court cases can be expected to cost more than \$500,000 to progress. We could expect two or three moderately complex cases to emerge from PPC9. Although likely to be case managed and heard together for efficiency, total external costs (expert and legal) of preparing for and attending hearing could be in the order of \$200,000 to \$300,000.

As well as the Council, appellants will incur significant costs too - though probably less than Council.

Costs (excluding staff time) to date for PPC9 and PPC10 are summarised below:

	<b>PPC9 - actual costs</b>	<b>PPC10 - actual costs</b>
To June 2017	\$49,000	\$689,000 (independent hearings)
To June 2018	\$188,000 (independent hearings)	\$136,000

<sup>1</sup> PPC10 was notified in February 2016.

To June 2019	\$85,000	\$640,000 (Environment court)
To February 2020	\$33,000	\$72,000
<b>TOTAL</b>	<b>\$355,000</b>	<b>\$1,892,000</b>

Note: Costs exclude staff time. Staff time could be approximately 1 - 1.5 FTE for approximately 1.5 years.

## 7. Other Resource Implications

### 6.1 Staffing

Based on past experience PPC9 could require 1 - 1.5 FTE and other key technical staff to prepare evidence and support appeals through the court.

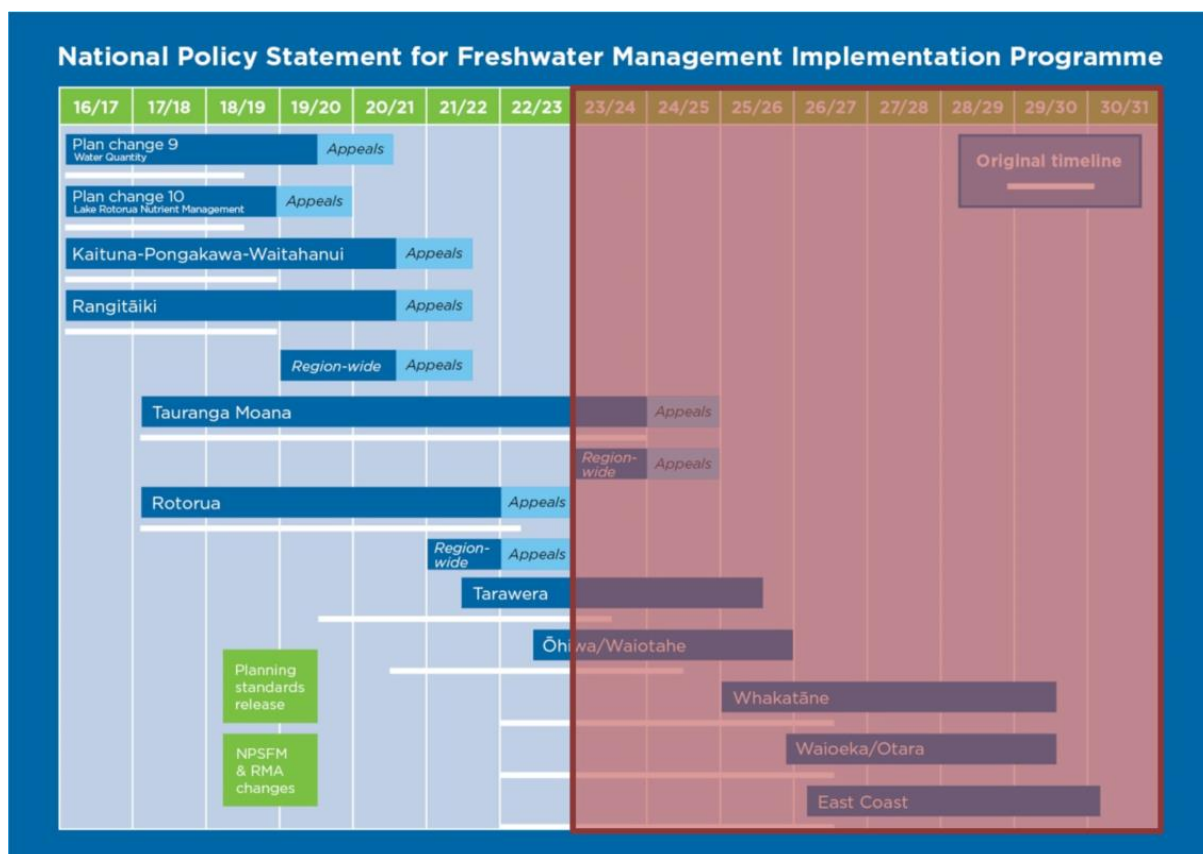
Technical staff (hydrologists, cultural experts, scientists) could also be required depending on the particulars of each case.

#### i. Scheduling

The government has advised it intends to gazette a revised NPSFM around July 2020. Based on the proposed NPSFM, the final NPSFM could require a plan change to be notified by December 2023.

The following diagram shows (in red) the implications of national policy changes on Council's current NPSFM implementation program. In short, a number of WMA's cannot be completed according to the current schedule.

Pursuing appeals will draw significantly from staff resources that would otherwise be committed to progressing other parts of the NPSFM implementation program. Based on current assignments, the approximately 1 - 1.5 FTE resource required over an approximate 1.5 years is equivalent to a 15 - 20% reduction to the program (or a 15 - 20% increase in the time to complete some tasks). In particular, staff that would otherwise be working to progress surface and groundwater quantity limits, and should be involved in cultural flow considerations would likely be drawn into PPC9 appeals.



## 7 Statutory considerations

Schedule 1 Clause 8D(1)(b) of the RMA 1991 says that where a local authority has initiated the preparation of a plan change, it may at any time prior to an environment court hearing commencing, withdraw the plan change and if so must give public notice of the withdrawal of a plan change, including the reasons for the withdrawal.

Should the decision of this committee be to withdraw PPC9, the following process/timeline will followed:

Indicative date	Step
21 Feb	Letters to any parties without email addresses are posted
25 Feb	Public notice to appear in the NZ Herald, Whakatane Beacon, BOP Times, Rotorua Daily Post, Rotorua Review, Waihi Leader, Opotiki News, Katikati Advertiser
25 Feb	<ul style="list-style-type: none"> <li>Email to all submitters, further submitters, appellants, s274 parties, statutory, territorial and iwi authorities, members of parliament</li> <li>Email to Councillors</li> <li>Email to staff</li> <li>Update website</li> <li>Advise the Environment Court</li> </ul>

Note: A communications plan has been prepared and will be updated accordingly following direction from this committee. This will help explain, simply, some of the key aspects of the Strategy and Policy decision.

## **8. Budget Implications**

### **a. Current Year Budget**

Plan Change 9 is being undertaken within the current budget for the Regional Planning and Engagement activity for Year 2 of the Long Term Plan 2018-2028. Aside from staff time, there is no budget set aside for resolving Environment Court appeals.

### **b. Future Budget Implications**

Future implementation work is provided for in Council's Long Term Plan 2018-2028. Legal fees are budgeted each year based on trends from prior years (allowing for inflation). We estimate savings arising from avoiding court to be in the order \$300,000 - \$500,000 assuming only 2 to 3 cases went to hearing. They could be considerably higher (potentially in the order of and \$1.5m), based on PPC10 costs. At least 1 - 1.5 FTE for 1.5 years would be required to support the appeals - assuming three topics progressed.

### **c. Summary of Financial Implications**

The cost of this Environmental Court appeal does not have a specific budget and will be absorbed into the 2019/20 legal budget. Staff will review the budget and any subsequent necessary budget requests through the in-year monitoring process.

## **9. Community Outcomes**

This item/project directly contributes to the Healthy Environment Community Outcome in the Council's Long Term Plan 2018-2028.

Julie Bevan  
**Policy & Planning Manager**

**for General Manager, Strategy & Science**

**13 February 2020**

# **APPENDIX 1**

## **Additional information for Consideration of option to withdraw PPC9**



## APPENDIX 1: PPC9 REPORTS AND MILESTONES

DATE	REPORT TO	REASON
3 August 2011	Strategy, Policy and Planning Committee	To get endorsement of a review of water allocation provisions to improve the management of the region's freshwater resources.
22 November 2011	Strategy, Policy and Planning Committee	To confirm direction.
12 August 2014	Regional Direction and Delivery Committee	To endorse the general scope and direction and proposed timeframes.
15 May 2015	Te Maru o Kaituna River Authority	To update the committee.
2 July 2015	Regional Direction and Delivery Committee	To confirm release of the draft plan change to the community for feedback.
7 October 2015	Te Maru o Kaituna River Authority	To provide an update to the committee.
17 November 2015	Regional Direction and Delivery Committee	To summarise the engagement undertaken and feedback received.
16 February 2016	Regional Direction and Delivery Committee	To provide a high level summary of the feedback received.
12 April 2016	Komiti Māori	To provide a summary of the feedback.
8 April 2016	Te Maru o Kaituna Authority	To provide an update to the committee.
28 June 2016	Regional Direction and Delivery Committee	To get approval of the changes made as a result of 5 May 2016 RDD Committee workshop.
9 August 2016	Regional Direction and Delivery Committee	To adopt the region-wide water quantity proposed plan change 9 for public notification and publication of supporting information.

DATE	REPORT TO	REASON
18 May 2017	Regional Direction and Delivery Committee	To provide an update following notification and closing of submissions.
22 June 2017	Regional Direction and Delivery Committee	To evaluate options to select a panel to hear and make recommendations on submissions.
18 September 2018	Regional Direction and Delivery Committee	To consider adopting the hearing panel recommendations as Council's decision and approval for public notification.
9 October 2018	Komiti Māori	To advise the committee of Council's RDD Committee decision to adopt the hearing panel's recommendations.
19 February 2019	Regional Direction and Delivery Committee	To provide an update on s274 notices and appeals and get confirmation no appeals subcommittee is required.
4 March 2019	Appeals subcommittee	To discuss possible agreements arising from plan change 9 mediation sessions.
2 July 2019	Appeals subcommittee	To give staff direction and appellants certainty in preparation for Court-assisted mediation - confidential.
7 August 2019	Appeals subcommittee	To prepare for Court-assisted mediation and facilitate the best outcomes during the process - confidential.
13 August 2019	Appeals subcommittee	To discuss suggested changes provision by provision.
11 September 2019	Appeals subcommittee	To discuss future options for proposed plan change 9 – confidential.
27 November 2019	Appeals subcommittee	To discuss
16 January 2020	Appeals subcommittee	To discuss
5 February 2020	Appeals subcommittee	To summarise feedback from parties to the post mediation version of proposed plan change 9 and consider the future of plan change 9.
18 February 2020	Strategy and Policy Committee	To consider total withdrawal of proposed plan change 9.



<b>TIMING</b>	<b>MILESTONES</b>
August 2011	Report to Strategy, Policy and Planning Committee for endorsement of a review of the region's freshwater resources through a plan change.
August 2015	Draft region-wide water quantity – proposed plan change 9 - released to community for feedback.
December 2015	Three-month community feedback period ended.
October 2016	Proposed plan change 9 notified.
November 2016	Closing date for submissions. Eighty-two submissions received.
June 2017	Closing date for further submissions. Thirty-one further submissions received.
March 2018	Hearings held over three day period.
September 2018	Council's RDD Committee adopts hearing panel recommendations.
October 2018	Decision notified.
November 2018	Appeals must be lodged with the Environment Court. Fourteen appeals were received.
December 2018	S274 notices must be lodged with the Environment Court. Twenty-six parties lodged notices.
March 2019	First appeals subcommittee workshop. Committee members: Councillors McDonald, Nees and Thompson.
March 2019	Pre-mediation workshop with iwi appellants and s274 parties.
May 2019	Pre-mediation workshop with iwi appellants and s274 parties.
June 2019	Pre-mediation workshop with all appellants and s274 parties.
July 2019	Appeals subcommittee workshop.
August 2019	Two appeals subcommittee workshops.
September 2019	Appeals subcommittee workshop.
November 2019	Appeals subcommittee workshop.
December 2019	Pre-mediation workshop for appellants and s274 parties.
December 2019	Pre-mediation workshop for iwi appellants.

<b>TIMING</b>	<b>MILESTONES</b>
January 2020	Appeals subcommittee workshops.
February 2020	Appeals subcommittee meeting.
February 2020	Strategy and Policy Committee decision on withdrawing proposed plan change 9.

## Appendix 2: Consideration of Implications for Council, Resources Users and Maori

<p><b>WQ P1 and WQ P2 – The WMA Process</b></p> <p>Attempts to provide certainty to plan users about how we will deliver future plan changes. This work is part of the WMA process, but the matters for each WMA to address are identified in the Plan Change.</p>	
<p><b>Implications of deletion for Council</b></p>	<ul style="list-style-type: none"> <li>· Relieves Council from a course of action it has not yet confirmed.</li> <li>· Allows Council to plan in a more integrated and unconstrained manner – in light of any upcoming NPSFM changes.</li> </ul>
<p><b>Implications of deletion for resource users</b></p>	<ul style="list-style-type: none"> <li>· Will now have less direction in the Plan itself about our future processes (although this clarity can be provided outside of the plan).</li> </ul>
<p><b>Implications of deletion for Maori</b></p>	<ul style="list-style-type: none"> <li>· Tangata whenua have a high level of interest in these provisions, particularly in relation to TMOTW. During the appeals process some amendments were identified that assisted in addressing concern, but outstanding matters remain.</li> <li>· Staff are working on a MOU which is hoped to address concerns on a more localised basis.</li> </ul>
<p><b>WQ P3 – Phasing out Over allocation</b></p> <p>This policy relates to phasing out over allocation, including by reviewing resource consents, rostering users via water user groups and shared reductions.</p>	
<p><b>Implications of deletion for Council</b></p>	<ul style="list-style-type: none"> <li>· Council can progress these without PPC9 as provided for in the RMA and the RPS.</li> </ul>
<p><b>Implications of deletion for resource users</b></p>	<ul style="list-style-type: none"> <li>· While PPC9 has raised awareness of the issue of phasing out over allocation, no regulatory action has occurred.</li> <li>· Future Council-led initiatives to review existing allocation can occur with or without PPC9.</li> </ul>
<p><b>Implications of deletion for Maori</b></p>	<ul style="list-style-type: none"> <li>· Addressing over allocation is a matter of concern to tangata whenua and assurance that this matter will be addressed through future processes will need to be provided to the extent possible if PC9 is withdrawn.</li> </ul>

<p><b>WQ P5 – Limits</b></p> <p>PPC9 sets conservative interim thresholds (limits) and links to the published Assessment of Water Availability and Estimates of Current Allocation Levels October 2016 (AWA) report. The AWA report and associated groundwater allocation tool show existing allocation compared to PPC9 limits. Having this information readily available is vital to managing the water resource. The PPC9 limit for surface water is the same as the RNRP limit, but there is no numeric limit for groundwater in the RNRP.</p>	
<p><b>Implications of deletion for Council</b></p>	<ul style="list-style-type: none"> <li>· PPC9 has put increased demands on science and data services to confirm resource availability and allocation. This has dramatically improved the robustness of decision-making. These improvements are retained.</li> <li>· The lack of numeric limits for groundwater in the RNRP will reduce clarity, but we better understand the GNS reports that underpin knowledge and will continue to use these as the basis of decision making.</li> <li>· Without policy identifying groundwater limits articulated in the plan (as opposed to in non statutory documents), practices will be more open to challenge.</li> </ul>
<p><b>Implications of deletion for resource users</b></p>	<ul style="list-style-type: none"> <li>· Not having PPC9 to so overtly link consent decision-making to the limits will make consenting more uncertain for everyone. However, the same thresholds will be used – just within a less certain policy framework.</li> <li>· Potential for applicants to challenge groundwater limits, with debate shifted from the plan to individual consent applications.</li> </ul>
<p><b>Implications of deletion for Maori</b></p>	<ul style="list-style-type: none"> <li>· Tangata whenua generally supported the identification of clear interim limits and opposed any revision that would be enabling of higher levels of allocation.</li> <li>· Staff are working on an MOU which is hoped to address concerns on a more localised basis.</li> </ul>
<p><b>WQ P10 &amp; 11 – Generally Decline</b></p> <p>WQ P10 begins with a clear statement “<i>to generally decline applications to take and use surface water and groundwater where the consented abstraction exceeds the interim limits...</i>” and WQ P11 “<i>to generally grant ....</i>” It provides a very simple “lay” framework most people can understand.</p>	
<p><b>Implications of deletion for Council</b></p>	<ul style="list-style-type: none"> <li>· Not having PPC9 means Council will need to ensure the “limits” in the AWA report or equivalent are available for parties to see and understand and that we have a clear factual basis which will enable consent applications to be processed and determined on a principled basis.</li> <li>· Loss of clarity regarding limits, especially how to deal with applications above “limits”.</li> </ul>

<b>Implications of deletion for resource users</b>	<ul style="list-style-type: none"> <li>· Not having the 'generally decline' policy removes an obstacle to obtaining consent in fully allocated resources, and means people are less likely to be put off applying to take water in these circumstances. However, it does not necessarily follow that applications will be granted.</li> <li>· Applicants need to bring robust information to support their applications being dealt with as Discretionary Activities.</li> </ul>
<b>Implications of deletion for Maori</b>	<ul style="list-style-type: none"> <li>· Tangata whenua supported the 'generally decline' policy.</li> <li>· New allocation (if supported by robust information) in highly allocated resources may create conflict in terms of future cultural flows and allocation and environmental effects, although these matters would require consideration on a case by case basis through consent applications, including cumulative effects.</li> </ul>
<p><b>Decision-making criteria</b></p> <p>Multiple objectives and policies provide a more methodical approach to decision making, including schedule 7 – Reasonable and efficient use criteria, metering and reporting requirements, flow variability, accounting, management at minimum flow, precautionary approach and consent matters.</p>	
<b>Implications of deletion for Council</b>	<ul style="list-style-type: none"> <li>· Less direction to consents staff to methodically work through decision-making matters.</li> <li>· Revert to less robust metering framework, although metering regulations and existing provisions remain and wide discretion available.</li> <li>· Increased flexibility to consider matters under Discretionary Activity, although this will not necessarily result in more consents being granted.</li> </ul>
<b>Implications of deletion for resource users</b>	<ul style="list-style-type: none"> <li>· Less certainty and direction regarding requirements.</li> </ul>
<b>Implications of deletion for Maori</b>	<ul style="list-style-type: none"> <li>· Applicants will still need to show how they have assessed the effects of the activity on Māori cultural values and interests and the consent authority will need to consider those effects when reaching a decision whether to grant consent.</li> </ul>
<p><b>Municipal provisions</b></p> <p>Explicit recognition of the importance of municipal (and domestic type) water takes, priority at times of low flow and specific efficiency requirements in water management plan.</p>	

<b>Implications of deletion for Council</b>	<ul style="list-style-type: none"> <li>· More difficult to drive efficiency and consistency in future consent processes with loss of water management plan requirement, although likely to remain a resource to determine efficiency.</li> <li>· Some loss of clarity although the RMA and the RPS support the social and economic importance of these takes being included in decision-making.</li> </ul>
<b>Implications of deletion for resource users</b>	<ul style="list-style-type: none"> <li>· Loss of certainty that was provided by Controlled Activity status.</li> <li>· Potentially more onerous consent renewal process.</li> <li>· However, unlikely to be any renewal applications made under PC9 provisions in any event (ie prior to 2026)</li> </ul>
<b>Implications of deletion for Maori</b>	<ul style="list-style-type: none"> <li>· Tangata whenua have some reservations about providing certainty, especially when linked to the maximum consent term of 35 years.</li> <li>· Special provisions supporting municipal takes also supported those for Marae and papakainga housing.</li> </ul>
<p><b>Hydroelectric Power provisions</b></p> <p>Explicit recognition of the importance of maintaining existing HEP generation capacity, via WQ P19 and associated issues and objectives</p>	
<b>Implications of deletion for Council</b>	<ul style="list-style-type: none"> <li>· Proposed provisions similar to those in operative plan = few implications.</li> <li>· Controlled Activity rule that relates to HEP consent renewal was never part of PPC9.</li> </ul>
<b>Implications of deletion for resource users</b>	<ul style="list-style-type: none"> <li>· Renewable electricity generators supported provisions or sought more directive policy regarding HEP water requirements.</li> <li>· No applications are expected before 2026.</li> </ul>
<b>Implications of deletion for Maori</b>	<ul style="list-style-type: none"> <li>· CNI in particular sought to remove HEP provisions from plan change and to allow future sub regional plan changes to inform policy.</li> <li>· Constraints on allocation above HEP sites will continue.</li> </ul>
<p><b>Unauthorised dairy shed water takes</b></p> <p>It is estimated that approximately 60 – 70 dairy farmers in the region are exceeding the permitted activity volume limit and don't have resource consent. A suite of provisions and a special rule in PPC9 would grandfather these users to a resource consent. These provisions were generally opposed by non-dairy farmers.</p>	

<b>Implications of deletion for Council</b>	<ul style="list-style-type: none"> <li>· Loss of PA rule requiring metering will hinder the ability to prove actual dairy shed water use, creating a compliance challenge.</li> <li>· Unauthorised users will need to apply for resource consent under Discretionary Activity provisions in the operative plan.</li> <li>· Applications are user pays, therefore no additional costs to Council, but will require co-ordination.</li> <li>· Council will need to work with industry to achieve an efficient process and compliance.</li> </ul>
<b>Implications of deletion for resource users</b>	<ul style="list-style-type: none"> <li>· Discretionary Activity process has no certainty for applicants and in some cases is likely to be more expensive than a Controlled Activity consent.</li> <li>· No special rule means all applications considered on merits.</li> </ul>
<b>Implications of deletion for Maori</b>	<ul style="list-style-type: none"> <li>· Tangata whenua raised concerns with PPC9 Controlled Activity rule, especially in relation to takes from over allocated streams.</li> </ul>
<p><b>Transfer of resource consents to take and use water</b></p> <p>PPC9 contains objectives, policies and rules managing the transfer of water between users within the same catchment. Without PPC9, the operative plan is silent on transfer, and the RPS supports transfer as an efficiency tool.</p>	
<b>Implications of deletion for Council</b>	<ul style="list-style-type: none"> <li>· RMA provides for transfer of water and Council can consider applications on their merits.</li> <li>· PPC9 includes a direction not to transfer unused water and there is no comparable direction in the RNRP.</li> </ul>
<b>Implications of deletion for resource users</b>	<ul style="list-style-type: none"> <li>· RMA provides for transfer of water and Council can consider applications on their merits.</li> <li>· Removes restrictive policy that restricted transfer to water that the transferor can show was used.</li> </ul>
<b>Implications of deletion for Maori</b>	<ul style="list-style-type: none"> <li>· Māori have generally opposed transfer provisions and support their deletion.</li> </ul>

### **Appendix 3: The main Legal Responsibilities towards Tangata Whenua**

#### *Resource Management Act (1991)*

Part 2 of the Resource Management Act 1991 includes provisions to:

- recognise and provide for the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, wāhi tapu, and other taonga; (s6(e)),
- Recognise and provide for the protection of protected customary rights;(s6(g)),
- Have particular regard to kaitiakitanga; (s7(a)),
- Take into account the principles of the Treaty of Waitangi (such as partnership and active protection) (s8).

Schedule 1 sets the formula for consulting tangata whenua in the development of natural resource policy. As per clause 3(1d) council shall consult tangata whenua who may be affected.

The threshold for consultation is provided by clause 3b in that, for the purposes of clause 3(1)(d), a local authority is to be treated as having consulted with iwi authorities in relation to those whose details are entered in the record kept under section 35A, if the local authority—

- (a) considers ways in which it may foster the development of their capacity to respond to an invitation to consult; and
- (b) establishes and maintains processes to provide opportunities for those iwi authorities to consult it; and
- (c) consults with those iwi authorities; and
- (d) enables those iwi authorities to identify resource management issues of concern to them; and

#### *Local Government Act (2002)*

The Local Government Act (LGA) places specific obligations on councils to facilitate participation by Māori in local authorities' decision-making processes. These include ensuring Council provides opportunities for Māori to contribute to decision-making processes [Section 14] and to establish and maintain processes for Māori to contribute to decision-making [Section 81(1) and 82(2)]. Moreover Council must consider ways in which it can foster the development of Māori capacity to contribute to decision-making processes [Section 81(1)].

#### *Operative NPSFM*

Objective D1 of the operative NPSFM requires Council to provide for the involvement of iwi and hapū, and to ensure that tangata whenua values and interests are identified and reflected in the management of fresh water. Policy D1 requires councils to provide for iwi involvement and to identify tangata whenua values and interests in the management of fresh water. Councils must also (Schedule 1, section 3B) ensure tangata whenua have the capacity to effectively engage.

#### *Regional Policy Statement*

The Bay of Plenty RPS (Policy IW2B) recognises the role of tangata whenua as kaitiaki and Policy IW3B recognises the rights of iwi to define their own values for sustainable resource management. Methods 41 – 45 require Council to promote consultation with affected tangata whenua, evaluate matters of significance to tangata whenua and involve iwi and hapū in the development of regional plans.



*Natural Resource Plan*

Provisions for kaitiakitanga in the NRP provide clear guidance about enabling kaitiakitanga in the policy development process. KT 02 guides Council towards cultivating partnership protocols with tangata whenua to achieve integrated management of natural resources and to take into account tangata whenua concerns about water (KT O4). Moreover kaitiakitanga policy provisions provides clear guidance to actively develop and integrated regime and working relationships with tangata whenua (KT P5), and to identify the cultural values associated with fresh water where considered appropriate by tangata whenua.

#### Appendix 4: Engagement with Tangata whenua to Develop PPC9

- 1) A draft plan change was developed with feedback from Komiti Māori, Te Maru o Kaituna and the Rangitāiki River Forum.
- 2) The draft plan was released for comment on 21 August 2015 and 6 weeks were given for an initial engagement round. Council's standard process for engagement periods for draft plan changes ranges between 2-4 weeks.
- 3) Following requests from tāngata whenua the period for feedback was extended to 1 December 2015 providing over 14 weeks.
- 4) Letters were sent to all iwi authorities and Councils entire Māori contacts database, over 750 dairy farm discharge consent holders, and over 1,000 water resource consent holders. Letters included information about the project (fact sheets), public meeting details and referred to Councils website for more information.
- 5) An Implications for Māori fact sheet was developed which recognised the specific issues that Māori face.
- 6) Letter, emails, media releases and a dedicated webpage were developed. The dedicated webpage included all printed materials, meeting dates, contact details as well as Frequently Asked Questions. These invitations provided opportunities to be involved in the region's freshwater management.
- 7) Twenty-four Iwi and Hapū management plans containing provisions directly relevant to PPC9 were reviewed to better understand the resource management issues of significance for each iwi or hapū authority. The report was subsequently updated prior to notification to include the most recent plans.
- 8) Over 30 hui and meetings (most arranged with Māori) were held over the engagement period for PPC9.
- 9) Presentations/papers and regular updates were provided to co-governance groups Te Maru o Kaituna and the Rangitāiki River Forum by way of Freshwater Futures updates. An adaptive approach was used with both clustered and individual hui.



