



Introduction to the Freshwater Planning Process

Proposed Change 5 (Kaituna River) to the Bay of Plenty Regional Policy Statement (Proposed Change 5)

Proposed Change 5 seeks to fulfil Regional Council's statutory obligation under the Tapuika Claims Settlement Act 2014¹ to recognise and provide for the vision, objectives and desired outcomes of the Kaituna River Document '*Kaituna, He Taonga Tuku Iho - A Treasure Handed Down*'. Proposed Change 5 includes issues, objectives, policies and methods specific to the Kaituna River and its tributaries.

Proposed Change 5 must follow a new freshwater planning process because it relates to freshwater. This new planning process came into effect on 1 July 2020 having been introduced through the Resource Management Amendment Act 2020. This alternate planning process supports the need to improve freshwater management and outcomes by providing a more streamlined decision making pathway.

New Freshwater Planning Process

The freshwater planning process provisions are set out in [Section 80A](#) and [Part 4 of Schedule 1](#) to the Resource Management Act 1991. This planning process is overseen by the Chief Freshwater Commissioner Professor Peter Skelton (Chief) who has been appointed by the Minister for the Environment.

Regional councils are required to use this planning process to implement changes required by the National Policy Statement for Freshwater Management 2020 (NPS-FM) and for any change to a regional plan or regional policy statement if it 'otherwise relates to freshwater'².

Public Notification and Submissions (Schedule 1)

The freshwater planning process starts when Proposed Change 5 is notified and it must be completed within two years of that date. Proposed Change 5 will follow the standard Schedule 1 process for submissions and further submissions. Then, as shown in **Appendix 1**, council must provide the Chief with council and local tangata whenua nominations for the freshwater hearings panel along with required documents within 6 months of notification.

Chief Freshwater Commissioner

Before convening a freshwater hearings panel the Chief will consider:

- Council and tangata whenua nominations;
- Required documents (submissions, Proposed Change 5 documentation etc.)

The Chief will determine the size and composition of a freshwater hearings panel and convene the hearings panel '*as soon as practicable*' after receiving the above information.

¹ Section 123 of the Tapuika Claims Settlement Act 2014

² Section 80A (2)(c)(ii) of the Resource Management Act 1991

Freshwater Hearings Panel

The freshwater hearings panel must include 5 members consisting of:

- two freshwater commissioners who are appointed by the Minister for the Environment (one of whom will be the chair);
- two Regional Council representatives; and
- one tangata whenua representative who has an understanding of tikanga Māori and mātauranga Māori.

The Chief does have the discretion to increase or reduce the size of the panel (but it can have no less than three members with one representative from each of the above categories).

In appointing members to a hearings panel the Chief will consider the need for collective knowledge and expertise³ across the following areas:

- judicial processes and cross-examination;
- freshwater quality, quantity and ecology;
- the RMA;
- tikanga Māori and mātauranga Māori;
- Te Mana o te Wai;
- water use in the local community; and
- subject areas likely to be relevant to the work of the panel.

Freshwater Hearings Panel Functions

Once appointed the freshwater hearing panel functions include⁴:

- Conducting a hearing of submissions on Proposed Change 5;
- Making recommendations to council after the hearing has concluded; and
- Hearing objections on struck out submissions.

The freshwater hearings panel will robustly test Proposed Change 5 and submissions because of the limitations on appeal rights. For example, they can regulate or prohibit cross-examination and, they are able to refer submitters to alternative dispute resolution (mediation)⁵.

Regional Council Decisions and Appeals

Regional Council must, within 40 working days of receiving the freshwater hearing panel's recommendations, reject or accept their recommendations. Submitters can only appeal to the Environment Court to the extent that recommendations by the freshwater hearing panel are rejected (see **Appendix 1**).

Further information

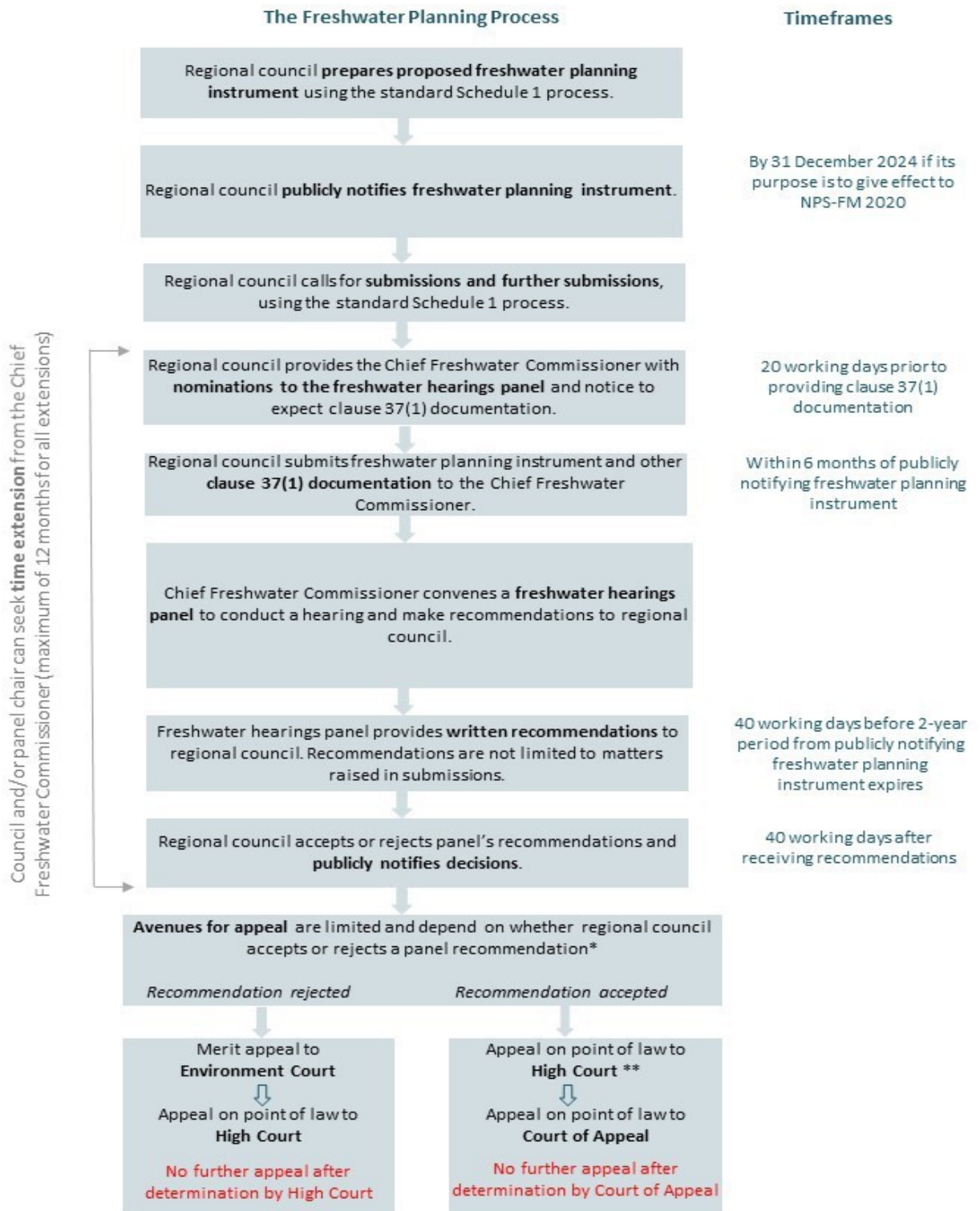
This information sheet is focussed on the preliminary stages for the freshwater planning process. There is additional guidance that can be accessed via the council's webpage for Proposed Change 5: www.boprc.govt.nz/change5.

³ Clause 59(6) of Schedule 1 of the Resource Management Act 1991

⁴ Clause 39 of Schedule 1 of the Resource Management Act 1991

⁵ Also see the: [Chief Freshwater Commissioner and Freshwater Hearings Panels Practice and Procedures Note 2020](#)

APPENDIX 1: The Freshwater Planning Process



*Where a decision applies to a recommendation that is *outside* the scope of submissions, appeal rights are available to *any* submitter on the freshwater planning instrument

**An application for judicial review to the High Court must be made concurrently with the point of law appeal to the High Court