

BEFORE THE ENVIRONMENT COURT

Decision No. [2013] NZEnvC 25

IN THE MATTER of appeals pursuant to Clause 14 of First
Schedule of the Resource Management Act
1991 (**the Act**)

BETWEEN NGĀTI MĀKINO HERITAGE TRUST
(ENV-2012-AKL-000170)

Appellant

AND BAY OF PLENTY REGIONAL
COUNCIL

Respondent

Court: Environment Judge J A Smith
Environment Commissioner K Prime
Environment Commissioner J Hodges

Participants: Mr J M Pou for Ngāti Mākino Heritage Trust (**Ngāti Mākino**)
Mr P H Cooney and R M Boyle for the Bay of Plenty Regional
Council (**the Regional Council**)
Ms L C R Burkhardt and T R M Williams for TrustPower Limited
– Section 274 party (**TrustPower**)
Ms B S Carruthers for Fonterra Cooperative Group Limited –
Section 274 party (**Fonterra**)
Mr P R Gardner for Federated Farmers of New Zealand
Incorporated – Section 274 party (**Federated Farmers**)
Mr M Tapsell for Waitaha Iwi Resource Management Unit –
Section 274 party

DECISION OF THE ENVIRONMENT COURT

- A. The Court concludes that the Amended Plan wording as set out in Annexure A and C should be adopted, subject only to the finalisation of wording for Method 39D and Method 39E.**
- B. The Court has suggested replacement text for Method 39D and Method 39E.**
- C. The following Directions are made:**
- 1. Parties (except the Regional Council) are to file in Court and serve on Regional Council their submission on Court's prepared wording of 39D within 15 working days of the issue of this Decision.**
 - 2. The Regional Council is to respond within a further 15 working days.**
 - 3. The parties are to then negotiate for a further 10 working days;**
 - a. If agreement is reached, a Joint Memorandum is to be filed within 15 working days.**
 - b. If agreement is not reached, the Council is to file a Memorandum with its wording within that same 15 working days and the Court will issue a Final Decision on that wording.**
 - 4. Any applications for costs are to be filed within 30 working days; replies filed within 15 working days; and reply within 10 working days thereafter.**

REASONS FOR DECISION

Introduction

[1] The interests of Tangata Whenua in fresh water management is a highly topical issue. It stems from wider issues relating to iwi rights and interests in fresh water and levels of iwi involvement in fresh water planning and consideration of consent applications.

[2] These are matters being debated at multiple levels, including before the Waitangi Tribunal, and as part of the Government's resource management reform agenda. Given the current negotiations in the Bay of Plenty to settle treaty claims, these questions are also the subject of negotiation seeking legislative intervention for co-management and the like as referenced in claims such as Tainui and the Waikato River.

Cultural Issues in Bay of Plenty

[3] The Bay of Plenty Regional Council has been involved at the leading edge of many of the developments of resource management in relation to cultural matters. This is not surprising given the significant number of iwi and hapu represented throughout the region, and the complexity of tribal relationships within this area.

[4] As with most of the Bay of Plenty, questions of mana whenua and rohe are heavily debated. The Regional Council has taken a progressive and proactive approach to developing relationships with iwi and hapu, and has sought to develop cooperative relationships in forward planning. Clear examples of this are the Smart Growth Policy, adopted through and around Tauranga; and more recently the Regional Council's approach to the Kaituna River and obtaining input from the many groups having an interest in that river.

[5] Many of the major issues in relation to the Regional Policy Statement (RPS) and cultural matters were resolved by Consent Order dated 18 September 2013, annexed hereto and marked A. Ngāti Mākinō was a party to that agreement.

[6] Nevertheless, this left several inchoate issues of the iwi which might be described as the *desire for the RPS to more precisely articulate the recognition of Māori values and participation in providing directions for the management of fresh water.*

[7] Given the widespread concern as to what Ngāti Mākinō was still seeking in its appeal beyond the consent order, the Court made directions dated 24 July 2013.

[8] Whilst Fonterra, TrustPower and Federated Farmers represent parties with a significant economic interest in water, the approach of all parties to this hearing was broadly constructive and respectful. Some of those parties such as Fonterra and TrustPower were broadly supportive of the Regional Council's approach in response to the concerns of Ngāti Mākinō. Even Federated Farmers who oppose some of the relief sought by Ngāti Mākinō were concerned largely with issues of fairness rather than avoiding an appropriate recognition of the interests of Ngāti Mākinō in water. They were concerned rather with the potential for preferential allocation of water to Ngāti Mākinō based upon the status of the applicant.

[9] We think it is fair to say that the concerns of Ngāti Mākinō were fairly unclear at the commencement of the hearing, but became clearer as the case progressed, and specifically:

- [a] There appears to be a recognition by the Regional Council and others that the appellant's customary and traditional values associated with the Waitahanui stream had been overlooked;
- [b] That the in-stream flow calculation for the Waitahanui set ten years ago did not give recognition to Māori cultural values. The Council

is now actively looking at better ways to take into account Māori cultural values and to involve iwi in resource management matters, particularly where water is concerned. In particular there are currently attempts being made by the Council, through Dr Suren, to look at how western science and matauranga Maori concepts might work together in water allocation models, but this work is still at an early stage; and

- [c] While Ngati Makino is seeking and the Council is prepared to look at incremental steps towards co-management and co-governance in the region, the Council still looks to the Crown to lead in this area through treaty settlements, particularly because of funding issues.

[10] The Court obtained the clear impression that through the hearing process there was a better understanding by all parties of one another's position, and a gradual movement towards a compromise position. Mr Cooney's final reply appears to us to have gone most of the way towards finding a resolution to the differences between the parties, and Mr Pou for Ngāti Mākinō recognised this.

[11] In doing so, all parties recognised that a Regional Policy Statement is a high level document and there will be further need for negotiation and discussion closer to the finalisation of Regional Water Plans.

The concerns of Ngāti Mākinō

[12] There appears to be no dispute that Ngāti Mākinō have traditionally occupied part of the Bay of Plenty region from Lakes Rotoiti and Rotoma to the coast. The iwi is also known by the name of Waitaha, after their ancestor Waitaha-nui-a-Hei. The key river for Ngāti Mākinō is the Waitahanui. Ngāti Mākinō are part of the Te Arawa Confederation of Tribes, but maintain strong relationships with Ngāti Awa also.

[13] Ngāti Mākino see themselves as one with the river Waitahanui and the flow named after their eponymous ancestor, and the currents of those waterways that flow through the rohe between the lakes and the coast. There is no dispute that Waitahanui represents the key taonga of the Ngāti Mākino iwi and their hapu. The Waitangi Tribunal noted in general comment on water bodies:¹

... water bodies were taonga over which hapu or iwi exercised te tino rangatiranga and customary rights in 1840, and with which they had a physical and metaphysical relationship under tikanga Māori (Māori lore). Their rights included authority and control over access to the resource and the use of the resource ...

The water in these water bodies was vital for the sustenance of the life and health of the person, both in body and spirit. The water bodies had their own mauri (life force) which was so tied to that of the people that if it sickened, they did too.

[14] Mr Pou stated in his submissions that *this appeal is not about an assertion of ownership of water but the confirmation of waterways as taonga*. Ngati Makino is seeking a right or authority with regard to the allocation of water in a way that recognises and reflects the potential customary usages of tangata whenua in relation to particularly the Waitahanui.

Ownership of water

[15] As has become clear in recent times, questions of ownership in land and other resources is far more complex than it may seem at first instance. Although Adam Smith, the father of capitalism, based capitalist economic theory on ownership, he was clear that even in English law ownership of land carries with it a set of rights and responsibilities.²

[16] In discussing the question of water, the Waitangi Tribunal noted its agreement with the claimants that:

¹ *The National Freshwater and Geothermal Resources Claim*, Wai 2358 Waitangi Tribunal Report 2012, page 101

² Adam Smith, *Wealth of Nations*, pp 324, 464, 478, 754, as examples

... evidence has demonstrated the customary 'indicia of ownership', and that 'full-blown' ownership of property in the English sense with the closest legal equivalent for Māori customary rights in 1840.³

[17] This report also agreed with the earlier Waitangi Tribunal decision on the Whanganui River and Central North Island tribunals:⁴

... te tino rangatiratanga was *more than ownership*: and encompassed the autonomy of hapu to arrange and manage their own affairs in partnership with the Crown ...

And importantly:

... 'the relationship between Māori and their taonga "exists beyond mere ownership, use, or exclusive possession; it concerns personal and tribal identity, Māori authority and control, and the right to continuous access, subject to Māori cultural preferences"'.⁵

[18] For RMA purposes, we acknowledge that the waterway Waitahanui is a taonga of Ngāti Mākino, and that their relationship and role in relation to that river is predicated upon these concepts of authority, responsibility and stewardship.

[19] The position in relation to the Treaty of Waitangi and its relationship to water matters has been addressed in part through the National Policy Statement on Freshwater Management 2011. We acknowledge that *McGuire v Hastings District Council*⁶ emphasised the provisions of Part 2 of the Act, Sections 6, 7 and 8 – in particular *the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, waahi tapu and other taonga* be recognised and provided for, and particular regard be given to kaitiakitanga and the principles of the Treaty of Waitangi. The Privy Council noted the strength of these provisions and the need for them to be borne in mind at every stage of the planning process. In that regard we note the Treaty principle not only of consultation, but in this case, the principle of partnership.

³ *The National Freshwater and Geothermal Resources Claim*, Wai 2358 Waitangi Tribunal Report 2012, page 101

⁴ *Ibid*

⁵ *Ibid*, at page 102

⁶ [2002] NZLR 57

[20] Mr Pou stressed that the Regional Plan was not the place to agree ownership of the Waitahanui, but rather sought that the Regional Policy Statement provide for the needs of both cultures and be respectful and responsive to the role of Ngāti Mākino in relation to the Waitahanui River. Mr Pou particularly noted the statement from the Environment Court in *Ngāti Rangi Trust v Manawatu-Wanganui Regional Council*.⁷

[412] Part II provisions containing requirements of particular sensitivity to Māori issues, are accessory to and inform the single purpose of the Act as set out in Section 5 – in particular the imperative to manage physical resources in a way or rate which enables "... people and communities to provide for their ... cultural wellbeing". While all cultures have to be considered, in appropriate cases we are bound, in achieving the broad purpose of the Act, by those requirements to have particular sensitivity to particular Māori issues.

[21] In that regard we note that the Waitahanui River is a taonga which requires this Court and the Regional Council to have particular sensitivity to Ngāti Makino's relationship to Waitahanui in preparing documents which affect it. As Mr Ariki Morehu, a kaumatua for Ngāti Makino, put it:

For us it is about protecting the integrity of our ancestor, his memory, and those taonga that he left for us. We are obligated to protect this area. It is an area we have died protecting in the past.

The National Policy Statement on Freshwater Management 2011

[22] Mr Pou finds further support for this approach from examination of the National Policy Statement on Freshwater Management (NPSFM). This requires Regional Councils to set flows for freshwater bodies, to safeguard their life-supporting capacities and aquatic ecosystems, efficiently allocate freshwater, and phase out existing over-allocation. The NPSFW addresses Tangata Whenua roles and interests in Objective D1 and Policy D1. We annexed hereto and mark **B** a copy of Objective D1 and Policy D1. These objectives are to be achieved while providing for the involvement of iwi and hapu and to ensure that tangata whenua values and interests are identified in:

⁷ A067/2004 at [412]

- [a] the management of fresh water;
- [b] decision-making regarding fresh water planning; and
- [c] how all other objectives in the National Policy Statement are given effect to.

Objective D1

[23] We accept that Objective D1 is clearly intended to underpin other objectives in the National Policy Statement in the same pervasive manner as the cultural directive set out in Part 2 of the RMA. We note that Ms H Feist and, we believe, the Council generally, acknowledge that the National Policy Statement foreshadows requirements beyond consultation. For example, Policy D1 states:

Policy D1

Local authorities *[which includes regional and territorial authorities]* shall take reasonable steps to:

- a) *involve iwi and hapu in the management of fresh water and freshwater ecosystems in the region*
- b) *work with iwi and hapu to identify tangata whenua values and interests in fresh water and freshwater ecosystems in the region and*
- c) *reflect tangata whenua values and interests in the management of, and decision-making regarding, fresh water and freshwater ecosystems in the region.*

[our emphasis]

[24] The Bay of Plenty Council document *Fresh look at fresh water in the Bay of Plenty (November 2012)* addresses Tangata whenua involvement directly at 2.5.1. The report notes:⁸

2.5.1 Tangata whenua

... Council has an already significant programme of Maori engagement and collaboration. We wish to build upon existing relationships to develop frameworks for further involving tangata whenua.

⁸ *Fresh look at fresh water in the Bay of Plenty*, page 6

Council-supported governance structures support a number of tangata whenua collaborative groups including indicative priority catchment areas ...

[25] We also note the power in the RMA for Joint Management Agreements with iwi or groups that represent hapu, that enable power, functions and duties under the Act to be jointly exercised. (See Section 2 *Interpretation*).

[26] We agree that the Regional Policy Statement should generally reflect the NPSFW, including Objective and Policy D1. Mr Cooney acknowledges that the Council intends to amend the Water and Land Plan *to follow the directions of the NPSFW*.

Cultural uses of water and fairness in relation to water management and allocation

[27] In a memorandum dated 24 July 2013, Counsel for Ngati Makino set out an objective *to ensure an acceptable security of supply of water for the cultural needs of Tangata Whenua while allocating water to other uses*. A consequent policy to achieve this identified a requirement to reserve water within sustainable allocation limits for the needs of marae, cultural restoration initiatives and mauri maintenance and restoration. This led to considerable discussion through the hearing on what cultural needs and cultural uses actually meant.

[28] The core issue for Federated Farmers was the suggestion that in some way the recognition and provision for Ngāti Mākino and potentially other iwi throughout New Zealand in Regional Plans would give preferential access to water for cultural uses based upon the status of the applicant. Other counsel expressed similar concerns on behalf of their clients, in particular Fonterra and TrustPower. Mr Gardner says its members require plans which enable a fair and flexible commercial environment. We did not understand Mr Gardner to go so far as to say that issues of fairness to tangata whenua and proper recognition of taonga were not matters of fairness.

[29] In addressing these matters, we consider first what *cultural uses* means and then how they need to be dealt with under the Act.

[30] The use of water for marae purposes is no different to the use of water for other domestic water supply. For the avoidance of doubt this will be clarified in Policy WQ3B and there was no disagreement on this matter at the Hearing.

[31] Obtaining a clear definition of what is meant by cultural restoration initiatives and mauri maintenance and restoration or more generic *cultural uses* was problematic and remained somewhat unclear at the end of the Hearing. In response to a question from Mr Cooney, Mr Awhimate considered cultural uses to mean anything to do with living, and how you treat and use the river. This includes learning to swim, fishing, feeding manuhiri, cleaning and cleansing cars. For the purposes of our decision, we have considered two specific requirements – water necessary to maintain and/or restore mauri and other in-stream values and water extracted from the stream for cultural uses such as irrigating kumara or other crops or any other cultural use as defined by Tangata Whenua.

[32] How the cultural aspect of in-stream values or cultural use are resolved is not addressed in the RPS. They are clearly issues that need to be addressed at the Regional Water Plan stage, and it is important that these issues are highlighted for resolution at the Plan stage. Nevertheless, we accept that, for current purposes, the RPS does not need to finally resolve these issues and further work and consultation is required.

[33] As we understand the Treaty of Waitangi, if the principle of partnership is to be applied, it requires a mutual respect between the Treaty partners, and by broader implication between members of the community, to the relationship and requirements of each party in respect of the resource. We cannot see any reason in principle that the Resource Management Act cannot enable tangata whenua involvement in allocation of water where appropriate, and even allocation to tangata whenua purposes in appropriate cases. This will of course turn on the

appropriate criteria included in the relevant plan and turns not on the status of the applicant but rather on the application of the various criteria which reflect the Act and NPSFW.

[34] We do not understand the decisions of *Carter Holt v Waikato Regional Council*⁹ or *Hauraki Māori Trust Board v Waikato Regional Council*¹⁰ to say that plans cannot, in an appropriate case, recognise and provide for tangata whenua based upon proper application of cultural or other principles under the Act. Mr Pou posed the question as to how the cultural requirements of future generations of Ngāti Mākinō will be provided for in the current policy statements in terms of water allocation into the future. If a volume is set for in-stream requirements, currently based upon the in-stream requirement for trout, then the rest based on open contestation for consumption, he makes the point that the particular relationship of Ngāti Mākinō with the river, and their requirements which might arise in the future for cultural recognition and use, are not being taken into account.

[35] For our part, and as noted above, we are unable to see any reason why an allocation could not be made for cultural use, provided the relevant Water Plan had appropriate mechanisms and criteria. So far as the Regional Policy Statement is concerned, we can see no reason that this higher order document could not recognise tangata whenua values and the need for a Water Plan to provide some flexibility for future tangata whenua developments either by cultural allocation or including it as part of the in-stream values until required in the future. This could not be done arbitrarily or generically, but would need to be specific to the local circumstances. We also agree that the rule could not amount to a priority allocation to particular applicants or individuals. (We see tangata whenua consultation and involvement as necessary in promulgation of in-stream cultural values and cultural uses in any Water Plan under the RPS).

⁹ [2011] NZEnvC380 at [438]

¹⁰ (HC) Auckland CIV 2003-485-999, 4 March 2004 at [59]

[36] That is not to say that such an approval is cognizant of cultural in-stream values and cultural use is necessary in every RPS, but there appears to be a strong argument as to its applicability in the current case. However at the Regional Policy level it is difficult to reach the conclusion that one needs to spell out what will occur at a planning level. The Policy should enable such outcomes but we agree with Mr Cooney that there is no necessity for it to be prescriptive at this stage.

[37] We therefore understand that the purpose of the Court's intervention at this stage would be to ensure that the policy statement is open to such outcomes and also properly recognises the role of Māori in both the development of policy at the plan level and in allocation. Put more simply, the question might be asked, *How can Māori involvement best be provided for in the Regional Policy Statement?* Put another way, we think it is the role of the Water Plan to address the question, *What are the most appropriate mechanisms to recognise Ngati Makino's relationship with the Waitahanui?* In the end we think this Regional Policy Statement is the appropriate document to address the first question, but Regional Plans should address the latter question.

Minimum flow

[38] The key concern of Mr Pou in relation to minimum flow was that at the time of preparing the last Water Plan, the Council had no way of measuring cultural concerns in terms of flow volume. The end result seems to be that no provision was made in the Plan, and by default the instream requirements for trout seem to control the minimum flow.

[39] We acknowledge that this is insulting to Māori at several levels, the first being that their values should be subsumed within those of a species of fish, the second that the species of fish itself is introduced. Mr Cooney acknowledged the difficulty and accepted that cultural concerns should be addressed as part of flow setting arrangements in Water Plans, and may in appropriate cases lead to an

increase in the minimum flow requirement. Certainly the evidence for the Council was somewhat ambivalent on this issue and it did appear that Council officers were still proceeding on the basis that it was the highest single criterion which represented the minimum flow rather than the potential combination of criteria where those flows are not for the same purpose.

[40] We acknowledge that ecological flow is not a substitute for a cultural flow, although in certain circumstances they may amount to the same flow. In that regard we acknowledge the concern of Ngāti Mākino – that they should be involved in defining stream values and allocation, and the minimum flow as appropriate to meet both ecological and cultural purposes.

[41] Again, we believe this to be a direct reflection of the Freshwater Management Policy Statement. It is an issue the Regional Policy Statement should address, at least at the broader level.

Questions of co-management

[42] Co-management was discussed, and is highly topical in the context of the Tauranga situation. We understand negotiations are currently taking place between the Crown and various hapu and iwi, and we understand the issue of co-management and its expression in payment in terms of statutory requirements are the subject of negotiation.

[43] Nevertheless, we accept that there is nothing in the RMA which seems to preclude the concept of co-management where agreed to by the Regional Council. To date Mr Cooney pointed out that one of the major impediments had been the lack of any funding mechanism and a preference, to date, by the Regional Council that this is provided for by statute.

[44] Nevertheless, Mr Cooney did not seem to dispute that there was the potential in the future for greater involvement of iwi in management planning and allocation matters. His concern was that the approach should be incremental, and

be responsive to the particular circumstances of each waterway involved. We acknowledge Mr Cooney's concerns, and caution against the adoption of a single model for all waterways in the region.

[45] Many of the major rivers have significant number of iwi and hapu having interests in them, together with significant interest by businesses, farmers and members of the public. At the regional policy level we need to acknowledge that there is the need for flexibility in what arrangements might be entered into, and there cannot be any assumption that one size will fit all.

[46] We understand the Waitahinui is not under significant demand at the current time and thus is not over-allocated, based on the Council's assessment criteria. One of the major consumptive users is Ngati Makino itself and the river in this case is subject to less competing demand from other iwi or hapu. Although there is concern by the iwi as to a derogation in the water quality standard, this appears to date to be largely due to changing farming practices, particularly dairying, on the margins of the river, and the variable response to riparian planting and fencing.

[47] We therefore acknowledge that an approach that may be appropriate in the case of the Waitahinui River may not be appropriate in respect of other watercourses.

The Test for Incorporation into Regional Policy Statements

[48] The Regional Policy Statement purpose is set out in Section 59, being an overview of the resource management issues of the region, and policies and methods to achieve integrated management of the natural and physical resources of the region. Sections 61 and 62 set out matters to be considered in contents of regional policy statements, and importantly for current purposes sub-section 3 requires the regional policy statement must give effect to a National Policy Statement or New Zealand Coastal Policy Statement, in this case the National Freshwater Policy Statement.

[49] Section 32 also considers a series of criteria, including alternatives, benefits and costs which must be applied to plans and policy statements:

- [a] Sub-section 3 includes the question of whether the objective is the most appropriate way to achieve the purpose of the Act; and
- [b] Whether, having regard to their efficiency and effectiveness, the policies, rules or other methods are the most appropriate for achieving the objectives.

[50] Those evaluations must take into account the benefits and costs of the policies, rules or other methods and the risk of acting or not acting if there is insufficient or uncertain information.

[51] We understand this duty falls upon the Court in assessing amendments to a Regional Policy Statement. In this case the decision of the commissioners has been significantly amended through the process, as is set out in proposed changes to the Plan in Annexure A, and it would be fair to say that further amendments are signaled by the Council and those are set out in Annexure C hereto.

[52] Given that the refinement of the position of the Appellant and the settlement of the wide range of other matters, we can see that no particular benefit will be derived from examining the commissioners' decision in any detail and we note that no party addressed us on this issue.

[53] Looking at the wording for this regional policy document, we take on board comments made by Mr Cooney in his final submissions representing the position of the Regional Council:

- [a] That the RPS is a forward looking document that promotes the recognition of tangata whenua values and involvement in resource management in the region;

- [b] That various formal and informal co-management and co-governance-based initiatives are currently under way. There are issues about capacity and resourcing, but the Council is willing to take incremental steps towards co-management and governance in the region;
- [c] The Council is actively looking to ways to better take into account cultural values and to involve iwi in resource management, particularly where water is concerned. This is in part because recognition of Māori cultural values has been an iterative and adaptive process that is still developing, as we have already noted. The Council is still developing further initiatives towards evaluating Māori cultural values and management processes;
- [d] That the RPS provisions specifically provide for the recognition of tangata whenua values in water bodies. It is also recognised that amendments to the existing Land and Water Plan will be required to accord with the National Policy Statement on Freshwater and this RPS.

[54] As a result of that, the council proposed provisions to achieve those objectives within the scope of the existing appeals. As noted, Mr Cooney constructively had provided a further draft of changes which are annexed hereto and marked **C**. Mr Pou acknowledged that many of these went a long way towards meeting the concerns of Ngāti Mākinō and reflects the developing understanding of the issues and possible solutions during the course of the hearing.

Should a Declaration on Method 177 of the Regional Water and Land Plan be undertaken by the Court?

[55] One suggestion made by the Court was that it might be possible to clarify the way in which Method 177 of the Regional Water and Land Plan is to be

implemented. As already noted, there appeared to be a misunderstanding as to the application of those provisions and the Court was concerned that its application in this way may adversely affect Ngāti Mākino and other tangata whenua when applied to watercourses.

[56] Mr Cooney did not believe that the methodology in Method 177 needs to be re-framed to provide for a cumulative calculation of the criteria in appropriate circumstances. He does accept that it is intended to achieve an integrated method of assessing the appropriate in-stream flow.

[57] On reflection we agree with Mr Cooney that a declaration as to the meaning of Method 177 at this point in time is not likely to achieve any purpose. We agree with him that the intent of the Method 177 criteria are simply to assist the Council *in making an informed decision on what should be the appropriate in-stream minimum flow requirement*. In some cases this will lead to an increase of the environmental flow to recognise cultural and other matters, i.e. recreational for example.

[58] Accordingly, the Court concludes that the directions contained in this Decision should adequately assist Council when it is applying Method 177. In simple terms, in addition to environmental flow consideration needs to be given to whether further flow is required for cultural purposes, recreational or other uses. We do not believe that Method 177 intends that the highest flow from A to C is the appropriate in-stream minimum flow. If necessary the parties could make an application to the Court for declaration on this issue.

[59] In those circumstances we therefore believe no error is evident in Method 177, and if it has been wrongly applied by the Council in the past that is a matter that can be rectified for the future and if necessary in individual cases on application.

[60] In any event and more importantly, Mr Cooney advises us that it is intended that the Regional Water and Land Plan be replaced to more properly reflect the Freshwater Policy Statement and the Regional Policy Statement. It appears to us that at that time consideration will need to be given to a methodology that will:

- [a] Enable proper assessment of the various items going into calculation of minimum flow; and
- [b] A method to mediate differences between various interest groups to settle upon a minimum flow.

[61] We now move on to discuss the various amendments suggested by Mr Cooney and consider those in light of the discussions above.

Policy WQ2A(a)

[62] He suggests the inclusion of the words *take into account Māori cultural values* subsequently in the explanation there is a recognition that this should be carried out in collaboration with *tangata whenua, the community and industry stakeholders*.

[63] We believe the explicit recognition of Māori cultural values and the subsequent recognition of tangata whenua along with community and industry stakeholders achieves the more appropriate balance reflecting Part 2 of the Act. It appears to us that it is implicit in any event that these values and collaboration should occur, and that the failure to do so could potentially breach Part 2. However, given Objective D1 of the NPSFW, there is a need for specific reference to give effect to Objective and Policy D1 of the NPSFW.

[64] Accordingly in terms of benefits and costs, the costs in our view is an issue that would require consultation and evaluation as required anyway; and the benefit is that it is now clearly set out for all parties and is required under NPSFW.

Policy WQ3B: Allocating Water

[65] There are two changes here:

[a] The first is at (c), the *reasonably foreseeable domestic, or municipal water supply* has had added to it:

(c) ... reasonably foreseeable domestic, marae or municipal water supply ...

That again in our view is implicit, but to avoid any confusion or doubt it is now to be included. We wonder whether the words at the end:

... additional to s 14(3)(b) under the RMA

could also be added simply to make it clear that the rights under the Act are not negated by the policy;

[b] In respect of (e), the Council now proposes including a new (e):

(e) The benefits of maintaining in-stream flows to protect and enhance the cultural values of a waterbody, including its mauri.

Formerly there was simply a reference to the cultural values of a water body. We consider again that this extension is clear and also helps direct parties as to what particular issues are being examined under (e).

[66] The addition to (h) indicates the availability of water for other uses, *including cultural uses*. This again helps ensure that Part 2 matters are not overlooked. For example, (j) has *the benefits to be derived from the use of water for rural production activities*. It therefore appears only reasonable that Māori

consider impact upon tangata whenua and to identify and promote ways of better assessing impact on cultural values, particularly Māori. In opening Mr Cooney suggested two further methods – Method 39D and 39E. During the course of the hearing there was some discussion about these matters and some variations were identified. We understand the wording agreed between Mr Pou and Mr Cooney to be:

Method 39D:

Work with tangata whenua in the development of ways to assess cultural values and the mauri of fresh water to ensure tangata whenua values are identified and reflected in the setting of in-stream flows and the setting of allocation limits.

and Method 39E as proposed by Mr Cooney in opening:

Method 39E: Iwi involvement in decision making

Consider on a case by case basis the involvement of iwi and mana whenua in decision making processes and the management of resources.

[69] The Court has concluded upon an alternative provision instead of 39D or E in the following terms:

Method 39D:

The Regional Council shall provide for the involvement of iwi and hapu in the development of Regional Plans to achieve this Policy Statement, and in particular:

- (a) to ensure that tangata whenua values and interests are reflected, including the objectives of the National Freshwater Policy Statement,
- (b) to involve iwi and hapu and to incorporate iwi and hapu management plans in decision making relating to the setting of in-stream flows and the allocation of water,
- (c) to develop a methodology to identify and provide for Māori cultural values in determining in-stream flows and allocating water, and
- (d) to work with tangata whenua to identify cultural priorities for investigation in management of culturally significant waterbodies.

We see this wording as more directly addressing the intentions of Methods 39 and 39B-D and thus as more appropriate.

Section 32 and Part 2 of the Act

[70] We are concerned here with the most appropriate wording to achieve a common objective reflected largely in Objective and Policy D1 of the NPSFW. Given the high level nature of the Regional Policy Statement we conclude actual waterways (i.e. Waitahanui) and methods (i.e. Joint Management) do not need to be resolved.

[71] However, we consider that, the final part of Objective D1 for the involvement of iwi and hapu in the management of fresh water goes further than consultation. Nevertheless, the range of potential outcomes is wide and we have tried to recognise this in our proposed wording for 39D.

[72] Overall we are minded to make the change sought in Mr Cooney's submissions with the exception of Methods 39D and 39E being replaced with our wording.

[73] For the reasons that we have set out at some considerable length in the course of this hearing, it is our view that the Court's wording would better address the issues sought to be encapsulated in methods 39D and E. Although we acknowledge that methods D and E do provide for some aspects of the matters we have discussed, we are particularly concerned that this should result in provisions in plans, methodologies and in fact even schedules of priorities where appropriate. It appears that there is a slight extension by the Court of the intent of Method 39D and E, although when compared to the wording discussed with Mr Pou, those differences are very small.

[74] Presently we consider our wording to be most appropriate given its fuller implementation of the NPSFW and the purpose of the Policy. We see benefits in a

more formal Policy, but acknowledge there may be costs we are not aware of given our wording was not developed until the conclusion of the hearing.

[75] In the circumstances we are minded to ask the parties to comment on the wording only of these provisions to be inserted as Method 39D or D and E as necessary. We want to point out that it is our view that with these minor amendments the plan more properly reflects the intent of the parties in relation to tangata whenua and the NPSFW.

[76] We have already noted that the parties have consented to the changes in **A**. We have noted several minor changes to the wording in the decision and in Annexure **C** and propose a new 39D to reflect Mr Cooney's 39C and 39D.

Section 290A Council's Decision

[77] This appeal now relates to matters of drafting. Given the significant changes agreed already, Annexure **A** and the further changes proposed by the Regional Council in Annexure **C**, we cannot see these further changes as doing any violence to the original decision. The thrust of the Plan remains intact and these wording changes seek to clarify the intent of the Objectives and Policies of the Plan and the Council's decision.

Overall assessment in terms of Part 2

[78] Subject only to finalising the wording of Method 39D (and E), it appears to us that the purpose of the Act is best achieved by the provisions we have discussed. This wording will properly reflect the emphasis of *Hastings City v McGuire*¹¹ decision and the permeating cultural provisions of Part 2, while recognising other aspects of Part 2 and the Act generally, which need to be taken into consideration. As a high-level document we suggest that the policy we have

¹¹ [2002] NZLR 57

discussed would enable policies and plans to be developed more readily in response.

CONCLUSION

[79] The Court concludes that the Amended Plan wording as set out in Annexures A and C and as altered by this Decision should be adopted, subject only to the finalisation of wording for Method 39D and Method 39E.

[80] The Court has suggested replacement text for Method 39D and Method 39E, namely:

Method 39D:

The Regional Council shall provide for the involvement of iwi and hapu in the development of Regional Plans to achieve this Policy Statement, and in particular:

- (e) to ensure that tangata whenua values and interests are reflected, including the objectives of the National Freshwater Policy Statement,
- (f) to involve iwi and hapu and to incorporate iwi and hapu management plans in decision making relating to the setting of in-stream flows and the allocation of water,
- (g) to develop a methodology to identify and provide for Māori cultural values in determining in-stream flows and allocating water, and
- (h) to work with tangata whenua to identify cultural priorities for investigation in management of culturally significant waterbodies.

Directions

[81] The following Directions are made:

- [a] Parties (except the Regional Council) are to file in Court and serve on the Regional Council their submission on Court's prepared wording of Method 39D within 15 working days of the issue of this Decision;

- [b] The Regional Council is to respond within a further 15 working days;
- [c] The parties are to negotiate for a further 10 working days:
 - i) If agreement is reached, a Joint Memorandum is to be filed within 15 working days;
 - ii) If agreement is not reached, the Council is to file a Memorandum with its wording within that same 15 working days and the Court will issue a Final Decision on that wording;
- [d] Any applications for costs are to be filed within 30 working days; replies filed within 15 working days; and reply within 10 working days thereafter.

[82] We commend the parties on their contribution to the case and the assistance they have provided the Court in this complex area.

DATED at AUCKLAND this 13th day of February 2014



J A Smith
Environment Judge

Annexure A

IN THE MATTER

of the Resource Management Act
1991

AND

IN THE MATTER

of appeals pursuant to clause 14
of the First Schedule to the Act -
Proposed Bay of Plenty Regional
Policy Statement as it relates to
Water Quantity

BETWEEN

**FEDERATED FARMERS OF
NEW ZEALAND INC**
(ENV-2012-AKL-00182)

**ROYAL FOREST & BIRD
PROTECTION SOCIETY OF
NEW ZEALAND INC**
(ENV-2012-AKL-000179)

**HORTICULTURE NEW
ZEALAND AND ORS**
(ENV-2012-AKL-000178)

**WESTERN BAY OF PLENTY
DISTRICT COUNCIL**
(ENV-2012-AKL-000175)

**FONTERRA COOPERATIVE
GROUP LTD**
(ENV-2012-AKL-000173)

**NGATI MAKINO HERITAGE
TRUST**
(ENV-2012-AKL-000170)

CARTER HOLT HARVEY LTD
(ENV-2012-AKL-000169)

TRUSTPOWER LTD
(ENV-2012-AKL-000167)

CONTACT ENERGY LTD
(ENV-2012-AKL-000157)

**MIGHTY RIVER POWER
LIMITED**
(ENV-2012-AKL-000153)

Appellants

AND

**BAY OF PLENTY REGIONAL
COUNCIL**

Respondent



BEFORE THE ENVIRONMENT COURT

Environment Judge JA Smith, sitting alone under section 279 of the Act

IN CHAMBERS at Auckland

CONSENT ORDER

Introduction

1. This consent order relates to the parts of the above ten appeals seeking relief in respect of the Topic **ENV-2012-339-000051 "WATER QUANTITY"** to the proposed Bay of Plenty Regional Policy Statement. It resolves that topic, and those parts of the appeals relating to section 2.11 of the proposed Policy Statement in full.
2. The following parties have given notice of interest in respect of these parts of those appeals:
 - 2.1 Carter Holt Harvey Ltd
 - 2.2 Contact Energy Ltd
 - 2.3 Eastland Generation Ltd
 - 2.4 Bluehaven Management Ltd
 - 2.5 Mount Maunganui Environmental Group Ltd
 - 2.6 Ngāti Ranginui Iwi Society
 - 2.7 Waitaha Iwi Resource Management Unit
 - 2.8 The Proprietors of Taheke 8 C and Ors
 - 2.9 Egg Producers Federation of NZ Inc
 - 2.10 Federated Farmers of New Zealand Inc
 - 2.11 Ford Land Holdings Pty Ltd
 - 2.12 NZ Kiwifruit Growers Inc & Horticulture NZ Inc
 - 2.13 NZ Transport Agency
 - 2.14 TrustPower Ltd
 - 2.15 Te Tumu Landowners Group & Ors



- 2.16 Carrus Corporation Ltd
- 2.17 EDS Inc
- 2.18 Fonterra Co-operative Group Inc
- 2.19 Genesis Energy Ltd
- 2.20 Dairy NZ Inc
- 2.21 Western Bay of Plenty District Council
- 2.22 Royal Forest and Bird Protection Society of New Zealand Inc
- 2.23 Mighty River Power Ltd
- 2.24 Tauranga City Council

Order

3. The Court has read and considered the above appeals and the memorandum of the parties dated 15 August 2013.
4. The Court is making this order under section 279(1)(b) of the Act, such order being by consent, rather than representing a decision or determination on the merits pursuant to section 279. The Court understands for the present purposes that:
 - (a) All parties to the proceedings with an interest in this Topic have executed the memorandum requesting this order;
 - (b) All parties are satisfied that all matters proposed for the Court's endorsement fall within the Court's jurisdiction, and confirm to the relevant requirements and objectives of the Resource Management Act, including in particular Part 2.
5. Therefore the Court orders by consent that the Proposed Bay of Plenty Regional Policy Statement be amended as shown in annexure A in underline (for additions) and ~~strike-through~~ (for deletions)
6. This consent order disposes of all relief sought in the above appeals in respect of Topic ENV-2012-339-000051 "WATER QUANTITY" and that topic shall now be closed.

In appeal ENV-2012-AKL-000153, appeal point 13 is resolved by this order. Appeal point 12 remains extant.



8. In appeal ENV-2012-AKL-000157 appeal points 72 and 79 is resolved by this order. Appeal point 65 remains extant.
9. In appeal ENV-2012-AKL-000167 appeal points 72 and 79 are resolved by this order. Appeal point 65 remains extant.
10. In appeal ENV-2012-AKL-000169 appeal points 7.15 and 7.20 are resolved by this order. Appeal point 7.8 remains extant.
11. In appeal ENV-2012-AKL-000170, appeal point 5(c), (e), (g) and (h) are resolved by this order. Appeal points 5(f) remains extant and is set down for hearing.
12. In appeal ENV-2012-AKL-000173, appeal point 10.5 is resolved by this order. Appeal points 8.8 and 11.6 remains extant.
13. In appeal ENV-2012-AKL-000175, appeal point 8.5 is resolved by this order. Appeal points 8.2, 8.3, 8.4 and 8.6 remains extant.
14. In appeal ENV-2012-AKL-000178, appeal points 8.3, 20.3, 22.3, 23.3, 24.3, 25.3, 26.3, 27.3 are resolved by this order. Appeal points 4.3, 6.3, 7.3, 9.3, 13.3, 14.3, 21.3, 28.3, 29.3, 30.3, 31.3 and 32.3 remains extant.
15. In appeal ENV-2012-AKL-000179, appeal point 8.12 is resolved by this order. Appeal point 8.3 remains extant
16. In appeal ENV-2012-AKL-000182, appeal points 24, 25, 26 and 27 are resolved by this order. Appeal points 22 and 23 remain extant.
17. There shall be no order as to costs.

DATED at AUCKLAND this 18th day of Sep^r 2013

J/A Smith
Environment Judge



A

2.11 Water quantity

Section 2.11 does not apply to the take and use of geothermal water, which is addressed in Section 2.4. However, Section 2.11 does apply to any take and use of freshwater which may be associated with geothermal resource use activities (such as water needed for drilling activities).

Water is essential for all life and is valued for its usefulness and intrinsic qualities. The use and development of fresh water resources plays an important role in providing for the region's wellbeing. Both surface and groundwater are highly valued in the Bay of Plenty region for a variety of reasons including:

- Economic – for primary production, power generation, and industry;
- Environmental – maintaining healthy ecosystems;
- Social – for water supply and safe swimming;
- Cultural – mahinga kai and mauri; and
- Recreation – for fishing and boating.

While water is a renewable resource, it is finite. The use of water resources needs to be prioritised to maximise the benefit to the region's communities. The amount of water taken for municipal supply, horticultural production, frost protection, industrial uses and farm pasture irrigation has increased significantly in the past 10 years. Increasing population and economic growth in the region has meant an increased demand for water and the pressure on water resources is also likely to increase as a result of climate change (a predicted effect of climate change is that droughts will occur more frequently).

Opportunities for improved water management include:

- Improving the way water is collected, stored and used.
- Exploring alternative sources e.g. rainwater harvesting.
- Addressing conflicting demands for water.
- Working collaboratively across key industry sectors.
- Identifying areas of the region where water supply is plentiful and making that water available for use.

Water management provisions seek to provide for conflicting values and potential opportunities, while meeting future needs, maintaining the life-supporting capacity of water, and minimising inappropriate or inefficient use.

Priority of allocation may be required as total water allocation approaches sustainability limits. Allocation of water and the discharge of contaminants are to be managed together to allow for the taking and use of water and the maintenance of water quality.

Providing for a strategic review of existing consented water takes and the potential reallocation of water within a catchment ensures the taking and use of water is sustainable. Efficiency use is required to ensure that the most benefit is obtained from its use.

Water conservation is required to reduce the pressure on resources. Water conservation, harvesting and storage are to be encouraged to enable the taking of water at high flows and stored for later use.





Table 11

Water quantity objectives and titles of policies and methods to achieve the objectives.

| Objectives | Policy titles | Page | Method titles | Implementation | Page |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------|-----------------------------------------|------|
| <p>Objective 31 The quantity of available water:</p> <p>(a) meets the provides for a range of uses and values for which water is required;</p> <p>(b) is allocated and used efficiently.</p> <p>(c) safeguards the mauri and life supporting capacity of water bodies; and</p> <p>(d) meets the reasonably foreseeable needs of future generations.</p> | <p>Policy WQ 2A: Setting and applying minimum instream flows and allocation limits for taking freshwater</p> | | <p>Method 2: Regional plan implementation</p> | Regional Council | |
| | <p>Policy WQ 3B: Allocating water</p> | | <p>Method 3: Resource consents, notices of requirement and when changing, varying, reviewing or replacing plans</p> | Regional Council | |
| | <p>Policy WQ 4B: Establishing common expiry and/or review dates for the taking of water</p> | | <p>Method 32: Research and monitor water allocation and abstraction</p> | Regional Council | |
| | <p>Policy WQ 5B: Reviewing resource consents for the taking of water</p> | | <p>Method 32A: Voluntary water user groups and agreements</p> | Regional Council | |
| | <p>Policy WQ 8B: Managing consented water takes to ensure efficient use</p> | | <p>Method 39: Consider Promote consultation with potentially affected tangata whenua</p> | Regional Council and district councils. | |
| | | | <p>Method 39B: Promote the enhancement of mauri</p> | Regional Council and district councils. | |
| | | | <p>Method 39C: Developing mauri models</p> | Regional Council and district councils. | |
| | <p>Policy WQ 1A: Promoting efficient water use, water harvesting and water transfers</p> | | <p>Method 2: Regional plan implementation</p> | Regional Council | |
| | | | <p>Method 32: Research and monitor water allocation and abstraction</p> | Regional Council | |
| | | | <p>Method 33: Prepare and provide information to reduce water demand</p> | Regional Council | |
| | | <p>Method 32A: Voluntary water user groups and agreements</p> | Regional Council | | |



Objectives

| Policy titles | Page | Method titles | Implementation | Page |
|-------------------------------------------|------|--------------------------------------------------------------------------------------------------------------|-------------------------|------|
| Policy WQ 6B: Ensuring water availability | | Method 3: Resource consents, notices of requirement and when changing, varying, reviewing or replacing plans | Regional Council | |
| Policy WQ 7B: Reducing water demand | | Method 32: Research and monitor water allocation and abstraction | Regional Council | |
| | | <u>Method 32A: Voluntary water user groups and agreements</u> | <u>Regional Council</u> | |
| | | Method 33: Prepare and provide information to reduce water demand | Regional Council | |

Also see:

Objective 14: Partnerships between Bay of Plenty Regional Council, district and city councils and iwi authorities (Table 6).

Objective 15: Water, land, coastal and geothermal resource management decisions have regard to iwi resource management planning documents (Table 6).

Objective 17: The mauri of water, land, air and geothermal resources is safeguarded ~~sustained or improved~~ and where it is degraded, ~~it is enhanced~~ over time (Table 6).

Water Quantity Policies

Policy WQ 1A: Promoting efficient water use, water harvesting and water transfers

Promote the efficient use of water, and enable water harvesting where adverse effects on the environment can be avoided, remedied or mitigated, and enable the transfer of water permits in whole or in part.

Explanation

Efficient use of water can minimise water waste and ~~unlock some of the water allocated for taking but not being used~~. Efficient use can enable better utilisation and desired environmental results. Using water more efficiently will also make water available when water supply is short, particularly in pressure catchments.

Water harvesting means taking and storing water when the availability is high and using it at a later time. Water harvesting should be consistent with sustainable management. Recognising the seasonal demand for water enables efficient use and complementary management.

Providing the ability to transfer water take and use entitlements between users will maximise the value from water. Transfer of permits should be consistent with sustainable management.

Table reference: Objectives 31 and 27, Methods 2, 32, 32A, 33

Policy WQ 2A: Setting and applying minimum instream flows and allocation limits for taking freshwater

- (a) Set and apply instream ~~minimum flow requirements~~ limits for instream flows for surface water bodies to safeguard their life-supporting capacity, and take into account other values where relevant; and
- (b) Set and apply allocation limits for the total amount of water that can be taken from surface water bodies to ensure a reliable and accessible amount of water is available for users; and
- (c) Set and apply allocation limits for groundwater (excluding geothermal water) which take into account, among other things,

- (i) The interaction between groundwater and surface water;
- (ii) Sustaining groundwater-fed streams and wetlands;
- (iii) Preventing the contamination of aquifers by geothermal bore water and saltwater intrusion; and
- (iv) Water levels in aquifers.

Explanation

Policy WQ 2A directs the establishment and application of *minimum instream flows* and total allocation limits.

Part (a) provides for instream ~~minimum flow requirements~~ in surface water bodies to sustain the life-supporting capacity and other non-consumptive values of the waterbodies. The ~~minimum flows~~ will ensure that water quality and ecological, cultural, recreational and amenity values are sustained.

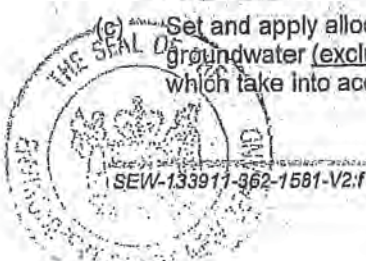
Part (b) refers to the maximum rate that water can be taken from a surface water body. ~~Allocation limits for rivers in a regional plan ensure a reliable and accessible amount of water is available for users while also safeguarding aquatic ecosystem health.~~

Part (c) concerns the total volume that can be taken from groundwater. Establishing total allocation capacity for groundwater aquifers safeguards dependent ecosystems in groundwater-fed streams and wetlands. It also ensures that the aquifer is not depleted, enabling supply of the groundwater resource for consent holders and permitted provisions. Establishing total allocation capacity for groundwater aquifers also helps prevent contamination of aquifers by geothermal bore water and saltwater intrusion.

Setting and applying ~~minimum instream flows~~ and allocation limits for taking water should be carried out in collaboration with the community and industry stakeholders.

It may be appropriate to set different allocation limits for groundwater aquifers and surface waterbodies for different periods of the year.

Table reference: Objectives 31, 2, 17, 20, 21 and 27, Methods 2 and 32



Policy WQ 3B: Allocating water

Have regard to the following matters when allocating and reallocating freshwater:

(aa) The demands and availability of water within catchments or areas.

- (a) Ensuring water in a water body is not over allocated;
 - ~~(b) Giving priority to making water available to meet existing and reasonably foreseeable domestic or municipal water supply needs;~~
 - (b) Making water available to meet existing and reasonably foreseeable domestic or municipal water supply needs with priority for essential drinking and sanitation requirements.
 - (c) The relative economic benefits of the proposed end use of the water, when allocation limits are exceeded, or are close to being exceeded;
 - (e) The cultural values of a water body;
 - (f) Requiring the volume of water allocated and taken to be reasonable and justifiable with regard to its intended use;
 - (g) The value of investments that existing consent holders have made which depend on the water abstracted;
 - (h) The availability of the water for other uses; and
 - (i) The benefits to be derived from the use of water for, or directly associated with electricity generation from renewable sources.
- (i) The benefits to be derived from the use of water for rural production activities.

Explanation

Policy WQ 3B should be considered, in conjunction with Policy WQ 2A which sets minimum in-stream flows and allocation limits. Water allocation is also to be considered in conjunction with other relevant policies in this Statement.

Section 30 of the Act provides regional councils with the ability to allocate natural resources such as water other than on a first-come/first-served basis. Policy WQ 3B sets out those matters that the regional council will have regard to when ~~directing~~ allocating and reallocation of water. The matters listed are not in order of priority.

Section 14 of the Act allows for the taking of water for fire fighting purposes, and for an individual's reasonable domestic needs or the needs of an individual's animals for drinking water, provided there are no adverse effects on the environment.

This policy recognises that ensuring water is not over allocated leads to a reliable water supply. Access to water for reasonable drinking and sanitation needs is a basic human right. Domestic or municipal water supply is a principal user of water in the region and drinking water and sanitation requirements are to be given priority over other water takes as it is essential for the health and welfare of people and communities. However, the scope of this priority is not unlimited and must be considered in relation to other matters listed in Policy WQ 3B, especially efficient use and the availability of water for other uses.

Demands on domestic or municipal water supply must not be seen as unlimited and should be constrained to avoid waste, uncontrolled consumption and associated costs. This ~~can~~ should be accomplished by the development of a water management plan to achieve effective domestic or municipal water supply and demand efficiencies.

~~The taking and use of water for the benefit of the community, region and nation is to be prioritised over individual benefit.~~ Consideration may be given to the community, regional or national benefits of the allocation of freshwater.

Protecting the cultural values of a water body sustains those values.

Requiring efficient use may include good industry practice, ensuring minimum waste and any other relevant aspects of efficiency.

Section 124A-C of the Act also allows for priority to be given to renewal of existing consents over new applications subject to matters of efficiency, efficient use, good practice and enforcement history.

Section 7 of the RMA requires particular regard to be given to the benefits derived from the use and development of renewable energy. The National Policy Statement for Renewable Electricity Generation promotes the use and development of renewable energy sources such as water to generate electricity.

With regard to Policy WQ 3B (aa), the nature of water demand and availability for a range of values may vary across the region, and may necessitate an area-based approach to water allocation.

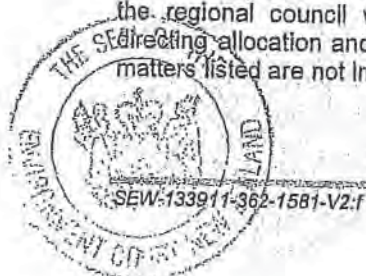


Table reference: Objectives 31, 10, 17, 21 and 27, Methods 3, and 32 32A, 39, 39B and 39C

Policy WQ 4B: Establishing common expiry and/or review dates for the taking of water

Establish and implement common expiry and/or review dates for the taking and use of surface and groundwater within specified catchments.

Explanation

Establishing common expiry and/or review dates for resource consents for a particular catchment allows for consideration of all water takes at the same time. Any allocation for existing and proposed uses need to ensure that the taking and use of water continues to be efficient and sustainable, having regard to the matters in Policy WQ 3B. This also ensures that the taking of water is appropriate within a changing environment.

Different catchments may have different common expiry and/or review dates depending on the catchment's pressures and environmental characteristics.

~~The following activities may be exempt from common expiry dates:~~

- ~~1. Non-typical takes such as dewatering and takes associated with the access to, and use and development of mineral resources; or~~
- ~~2. Takes for regionally significant infrastructure including for renewable electricity generation and domestic or municipal water supply. However, they will include review dates which coincide with the common expiry and/or review date for that catchment. This policy does not apply to the taking of geothermal fluid by requiring authorities.~~

Table reference: Objectives 31, 2, 10, 21 and 27, Methods 3 and 32

Policy WQ 5B: Reviewing resource consents for the taking of water

Review existing resource consents for the taking and use of surface and ground water on a catchment by catchment basis to implement allocation limits and instream minimum flows.

Explanation

A review of resource consent conditions will address any adverse environmental effects which have arisen since consent was issued, or will enable allocation limits and instream minimum flows to be set (as provided for by Policy WQ 2A). A review also ensures that the taking and use of water continues to be efficient and sustainable as environmental circumstances change. ~~Unused water may be returned to the water body under section 128(1)(b) of the Act and thereafter may be available to other users.~~

Table reference: Objectives 31, 2, 10, 21 and 27, Methods 3 and 32

Policy WQ 6B: Ensuring water availability

When applying for designations, plan changes, land use and/or subdivision consent the applicant should ensure that there is sufficient water available at the location to support the activity.

Explanation

Before seeking consent for a new development or particular activity the applicant should check that there is sufficient water available to sustain it. The Regional Council can advise a potential applicant regarding the availability of water at the location of their proposed development so they can make an informed decision about whether or not to proceed with their proposal.

Table reference: Objectives 31, 10, 20, 26A and 27, Methods 3, 32 and 33

Policy WQ 7B: Reducing water demand

When applying for land use and/or subdivision consent the applicant shall consider alternative sources of water, and where reasonable, implement water conservation measures and the benefits of water collection and reuse and/or recycling.

Explanation

New subdivisions and developments increase the demand on water bodies. Initiatives such as rainwater collection from roofs, use of rain gardens, water recycling and greywater reuse can reduce this demand. A reduction in demand can result in positive environment effects such as recharge of the groundwater resource.



Table reference: Objectives 31 and 20, Methods 3, 32, 32A and 33

Policy WQ 8B: Managing consented water takes to ensure efficient use

When considering an application for resource consent to take water, regard shall be given to:

- (a) The extent to which water users have demonstrated a reasonable need for the rates and volumes sought;
- (b) The extent to which water users have demonstrated that the water will be used efficiently;
- (ba) The extent of potential adverse effects on other authorised users;
- (c) Specifying the maximum allowable water use as well as maximum abstraction rates;
- (d) Requiring the consent holder to measure and report the actual amount of water taken;
- (e) Whether water is able to be taken within pressure catchments and aquifers that are nearing full allocation;
- (f) Preventing saltwater intrusion;
- (g) The reasonably foreseeable impacts of climate change;
- (h) Establishing and applying a consent term of no more than 15 years, unless:
 - (i) The take and use of water is necessary to enable the use or development of regionally significant infrastructure;
 - (ii) The take and use of water is for a non-typical activity such as dewatering and the access to, and use and development of mineral resources; or
 - (iii) a longer term is demonstrated by the applicant to be appropriate in the circumstances;
- (i) The benefits to be derived from the use of water for, or directly associated with electricity, generation from renewable sources.

Explanation

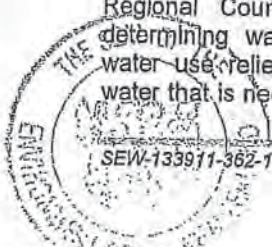
The policy outlines those matters that the Regional Council will have regard to when determining water permit applications. Efficient water use relies on taking only the amount of water that is needed and having systems in place

to avoid waste. Specifying the maximum allowable amount and rate discourages over-abstraction.

The amount of water should be measured and reported on to allow assessment as to whether the allocation limits and instream minimum flows have been set at appropriate levels. Regard should also be given to whether the water resource is nearing over allocation.

Saltwater intrusion should be prevented. Climate change may reduce the amount of water available. Restricting the terms of consent granted ensures the taking and use of water is sustainable and efficient. Giving regard to a maximum consent term of 15 years may still allow for longer consent terms in appropriate circumstances, determined on a case by case basis.

Table reference: Objectives 31, 17 and 20, Methods 3, and 32 and 32A



3.2 Methods to implement policies

...

3.2.2 Guiding methods

...

Method 32: Research and monitor water allocation and abstraction

Research and/or monitor:

- (aa) The amount of available water in catchments, having regard to the interconnection between groundwater and surface water, using accepted and appropriate hydrological methods;
- (a) The rate and/or quantity of water allocated;
- (b) The quantity of actual use; and
- (c) The cumulative effects of water abstraction.

Implementation responsibility: Regional council

Method 32A: Voluntary Water User Groups and agreements

- (a) Promote voluntary water user groups, or agreements between water users, to assist the management of water allocation and use.
- (b) Provide, where available, accurate technical information on which user groups can make decisions.
- (c) Investigate how water user groups can be used to:
- (i) assist with management of water allocated to abstractors;
 - (ii) provide opportunities for shared investment in, and optimal use of water transport and storage infrastructure;
 - (iii) make best use of available water.

Implementation responsibility: Regional council

Method 39—ConsiderPromote consultationg with potentially affected tangata whenua

~~Consider~~Promote consultationg with tangata whenua and any other parties affected:

- (a) Early in a proposal development and, as appropriate, to continue this consultation during the implementation of any consented activity; and
- (b) As the occasion may dictate, in accordance with tikanga Māori (consultation may be through tribal federations or runanga, iwi authorities, hapū or whānau, depending on the issue).

Implementation responsibility: Regional council and city and district councils.

Method 39B: Promote the enhancement of mauri

Recognise the importance to tangata whenua of safeguarding, or enhancing where it is appropriate, the mauri of water, land, air and geothermal resources when a proposal involves matters of significance to Māori.

Implementation responsibility: Regional council and city and district councils.

Method 39C: Developing mauri models

Work with tangata whenua in the development of ways to assess the mauri of natural resources with the intent that such methods are implemented in regional plans for monitoring consented activities, the state of the environment, and the efficiency and effectiveness of plan provisions, where these involve matters of significance to Māori.

Implementation responsibility: Regional council and city and district councils.





Objectives, anticipated environmental results (AER) and monitoring indicators.

| Objectives | Anticipated environmental results (AER) | Monitoring indicators |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>Water quantity</p> <p>Objective 31 The quantity of available water: (a) meets the <u>provides for a</u> range of uses and values for which water is required; (b) is allocated and used efficiently; (c) safeguards the mauri and life supporting capacity of water bodies; and (d) meets the reasonably foreseeable needs of future generations.</p> | <p>The ecological, cultural, recreational and amenity values of water bodies are maintained. The health of aquatic ecosystems is safeguarded. The quantity of available water meets the reasonably foreseeable needs of future generations.</p> | <p>River and Stream flows do not fall below their instream minimum flows due to abstraction of water. Groundwater allocation limits are not exceeded.</p> |

Appendix A – Definitions

Efficient allocation: In relation to freshwater allocation, including economic, technical and dynamic efficiency.

Efficient use: In relation to the use of freshwater, the amount of water beneficially used in relation to that taken. It relates to the performance of a water-use system, including avoiding water wastage.



D. Tāngata whenua roles and interests

Objective D1

To provide for the involvement of iwi and hapū, and to ensure that tāngata whenua values and interests are identified and reflected in the management of fresh water including associated ecosystems, and decision-making regarding freshwater planning, including on how all other objectives of this national policy statement are given effect to.

Policy D1

Local authorities shall take reasonable steps to:

- a) involve iwi and hapū in the management of fresh water and freshwater ecosystems in the region
- b) work with iwi and hapū to identify tāngata whenua values and interests in fresh water and freshwater ecosystems in the region and
- c) reflect tāngata whenua values and interests in the management of, and decision-making regarding, fresh water and freshwater ecosystems in the region.

APPENDIX "A"

FURTHER AMENDED VERSION OF WATER QUANTITY PROVISIONS

Policy WQ 2A: Setting and applying instream flows and allocation limits for taking freshwater

- (a) Set and apply limits for instream flows for surface water bodies to safeguard their life-supporting capacity, and take into account **Maori cultural values and** other values where relevant; and
- (b) Set and apply allocation limits for the total amount of water that can be taken from surface water bodies to ensure a reliable and accessible amount of water is available for users; and
- (c) Set and apply allocation limits for groundwater (excluding geothermal water) which take into account, among other things;:
 - (i) The interaction between groundwater and surface water;
 - (ii) Sustaining groundwater-fed streams and wetlands;
 - (iii) Preventing the contamination of aquifers by geothermal bore water and saltwater intrusion; and
- (iv) Water levels in aquifers

Explanation

Policy WQ 2A directs the establishment and application of *instream flows* and total allocation limits.

Part (a) provides for instream flow requirements in surface water bodies to sustain the life-supporting capacity and other non-consumptive values of the waterbodies.

Part (b) refers to the maximum rate that water can be taken from a surface water body. Part (c) concerns the total volume that can be taken from groundwater. Establishing total allocation capacity for groundwater aquifers safeguards dependent ecosystems in groundwater-fed streams and wetlands. It also ensures that the aquifer is not depleted, enabling supply of the groundwater resource for consent holders and permitted provisions. Establishing total allocation capacity for groundwater aquifers also helps prevent contamination of aquifers by geothermal bore water and saltwater intrusion.

Setting and applying instream flows and allocation limits for taking water should be carried out in collaboration with **tangata whenua**, the community and industry stakeholders.

It may be appropriate to set different allocation limits for groundwater aquifers and surface waterbodies for different periods of the year.

Table reference: **Objectives 31, 2, 17, 20, 21 and 27, Methods 2 and 32**

Policy WQ 3B: Allocating water

Have regard to the following matters when allocating and reallocating freshwater:

- (a) The demands and availability of water within catchments or areas.
- (b) Ensuring water in a water body is not over allocated;

- (c) Making water available to meet existing and reasonably foreseeable domestic, Marae or municipal water supply needs, with priority for essential drinking and sanitation requirements.
- (d) The relative economic benefits of the proposed end use of the water, when allocation limits are exceeded, or are close to being exceeded;
- (e) **The benefits of maintaining instream flows to protect and enhance the cultural values of a waterbody, including its mauri. The cultural values of a water body;**
- (f) Requiring the volume of water allocated and taken to be reasonable and justifiable with regard to its intended use;
- (g) The value of investments that existing consent holders have made which depend on the water abstracted;
- (h) The availability of the water for other uses, **including cultural uses;**
- (i) The benefits to be derived from the use of water for, or directly associated with electricity generation from renewable sources; and
- (j) The benefits to be derived from the use of water for rural production activities.

Explanation

Policy WQ 3B should be considered in conjunction with Policy WQ 2A which sets instream flows and allocation limits. Water allocation is also to be considered in conjunction with other relevant policies in this Statement.

Section 30 of the Act provides regional councils with the ability to allocate natural resources such as water other than on a first-come/first-served basis. Policy WQ 3B sets out those matters that the regional council will have regard to when directing allocation and reallocation of water. The matters listed are not in order of priority.

Section 14 of the Act allows for the taking of water for fire fighting purposes, and for an individual's reasonable domestic needs or the needs of an individual's animals for drinking water, provided there are no adverse effects on the environment.

This policy recognises that ensuring water is not over allocated leads to a reliable water supply. Access to water for reasonable drinking and sanitation needs is a basic human right. Domestic or municipal water supply is a principal user of water in the region and drinking water and sanitation requirements are to be given priority over other water takes as it is essential for the health and welfare of people and communities. However, the scope of this priority is not unlimited and must be considered in relation to other matters listed in Policy WQ 3B, especially efficient use and the availability of water for other uses.

Demands on domestic or municipal water supply must not be seen as unlimited and should be constrained to avoid waste, uncontrolled consumption and associated costs. This should be accomplished by the development of a water management plan to achieve effective domestic or municipal water supply and demand efficiencies.

Consideration may be given to the community, regional or national benefits of the allocation of freshwater.

Protecting the cultural values of a water body sustains those values.

Requiring efficient use may include good industry practice, ensuring minimum waste and any other relevant aspects of efficiency.

Section 124A-C of the Act also allows for priority to be given to renewal of existing consents over new applications subject to matters of efficient use, good practice and enforcement history.

Section 7 of the RMA requires particular regard to be given to the benefits derived from the use and development of renewable energy. The National Policy Statement for Renewable Electricity Generation promotes the use and development of renewable energy sources such as water to generate electricity.

With regard to Policy WQ 3B (aa), the nature of water demand and availability for a range of values may vary across the region, and may necessitate an area-based approach to water allocation.

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| <i>Table reference: Objectives 31, 10, 17, 21 and 27, Methods 3, 32, 32A, 39, 39B and 39C</i> |
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Domestic, Marae or municipal water supply: A reticulated supply publicly or privately owned where the take is;

- 1 for the primary purpose of human drinking, or sanitation or household needs wherever they arise; or
- 2 for the purpose of enabling local authorities to meet their general responsibilities (wherever they arise) under the Local Government Act 2002, the Health Act 1956 and relevant legislation, including supply for the purposes of industrial and agricultural use

