BEFORE THE FRESHWATER HEARINGS PANEL

IN THE MATTER **of the Resource Management Act 1991**

AND

IN THE MATTER **Plan Change 5**

OPENING SUBMISSIONS FOR THE PROPRIETORS OF TAHEKE 8C & ADJOINING BLOCKS INCORPORATION

Dated: 10 Whiringa-ā-nuku 2022

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MAY IT PLEASE THE FRESHWATER HEARINGS PANEL

Introduction

1. The Proprietors of the Taheke 8C & Adjoining Blocks Incorporation generally support Plan Change 5 with 14 specific amendments.[1] The proposals are designed to improve recognition of appropriate customary interests in relation to the awa.

2. Taheke 8C is a whānau-based Māori incorporation.[2] It owns approximately 1,214 hectares of land near the head of the Ōkere River.[3] Five blocks of its lands adjoin, or are very close to, the river; three include at least half of the riverbed.[4] Taheke 8C's lands are ancestral lands. From time immemorial, the whānau have been the mana whenua of their lands and have exercised ahi kā and kaitiakitanga over their lands on the banks of the Ōkere River.[5]

3. Taheke 8C supports recognition of the relationship of hapū and iwi to the awa. Taheke 8C says, however, that the express recognition of hapū and iwi through Plan Change 5 should not be to the exclusion of mana whenua groups, such as Taheke 8C, who are not hapū and iwi. Groups like Taheke 8C, as the mana whenua, ahi kā and kaitiaki of parts of the Ōkere River, have a legitimate role to play and voice to be heard. A more appropriate solution can be found that enhances their mana as well as that of hapū and iwi.

Taheke 8C's concerns

4. Key aspects of the evidence of Tawhiri Morehu, the chairman of Taheke 8C, are:

   4.1. Where the Taheke 8C lands adjoin the awa, Taheke 8C are the mana whenua, tangata whenua, ahi kā and kaitiaki of those lands and the river.[6]

   4.2. Iwi and hapū (especially Ngāti Hinerangi) do have important associations with the awa, but not to the exclusion of Taheke 8C.[7]

   4.3. People cannot assume there are existing lines of communication between iwi and hapū on the one hand and those (like Taheke 8C) who are the mana whenua,

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1 The 14 amendments are set out in pp 12-25 of the statement of evidence of Mr Greg Carlyon.
2 See the statement of evidence of Mr Tawhiri Morehu at [4] and [19]; and the statement of evidence of Mr Peter Mason at [9] and [20].
3 See the the statement of evidence of Mr Peter Mason at [7]. Appendix 1 to Mr Mason's evidence ists the lands owned by Taheke 8C. A map showing the location of the land is in Mr Morehu's evidence at [5].
4 See Mr Morehu's evidence at [6] and [7] and Mr Mason's evidence at [7].
5 See Mr Morehu's evidence at [3].
6 See Mr Morehu's statement of evidence at [2.1].
7 See Mr Morehu's statement of evidence at [2.2].

tangata whenua, ahi kā and kaitiaki at specific locations of the awa on the other.[8]

4.4. Everyone needs to establish better lines of communication with one another.[9]

5. Key aspects of the evidence of Peter Mason, the Acting General Manager of Taheke 8C, are:

5.1. Taheke 8C supports iwi and hapū having a role in relation to the management of the awa.[10]

5.2. Taheke 8C's key concern with the Kaituna River Document and Plan Change 5 is the repeated reference to "iwi and hapū" throughout both documents.[11]

5.3. There are not existing lines of direct communication between our organisation and representatives of iwi (for instance Ngāti Pikiao) and hapū.[12]

5.4. Taheke 8C considers it wrong that the resource management framework that relates to the awa would not expressly include Taheke 8C as the mana whenua, tangata whenua, ahi kā and kaitiaki of the river where it adjoins Taheke 8C's lands.[13]

5.5. Taheke 8C is also concerned about any recreational use of the awa. The awa is extremely dangerous.[14] Recreational use should not be elevated to policy level as of right.[15]

5.6. The panel should ensure that the concerns of Taheke 8C and other Māori land owners on the awa are practically acknowledged.[16]

Legal context

6. The Bay of Plenty Regional Council, in amending its regional policy statement, must "recognise and provide for the visions, objectives, and desired outcomes of the Kaituna River document": Tapuika Claims Settlement Act 2014, s 123. That obligation applies:

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8 See Mr Morehu's statement of evidence at [2.3].
9 See Mr Morehu's statement of evidence at [2.4].
10 See Mr Mason's statement of evidence at [20].
11 See Mr Mason's statement of evidence at [20].
12 See Mr Mason's statement of evidence at [21].
13 See Mr Mason's statement of evidence at [22].
14 See Mr Mason's statement of evidence at [23].
15 See Mr Mason's statement of evidence at [26].
16 See Mr Mason's statement of evidence at [29].

6.1. "only to the extent that the contents of the Kaituna River document relate to the resource management issues of the region or district": Tapuika Claims Settlement Act 2014, s 123(4)(a); and

6.2. "only to the extent that recognising and providing for the vision, objectives, and desired outcomes of the Kaituna River document is the most appropriate way to achieve the purpose of the Resource Management Act 1991 in relation to the Kaituna River": Tapuika Claims Settlement Act 2014, s 123(4)(b).

7. Section 6(e) of the RMA also requires recognition and provision for "the relationship of Māori and their culture and traditions with the ancestral lands, water, sites, waahi tapu, and other taonga".

8. Section 7(a) requires the panel to have "particular regard" to kaitiakitanga.

9. Section 8 requires the panel to take into account the principles of the Te Tiriti o Waitangi. Treaty principles include:

9.1. the principle of partnership, where the Crown and Maori have a positive duty to act in good faith, fairly, reasonably and honourably towards the other;[17] and

9.2. the principle of active protection, whereby the Crown has a positive duty to protect Māori property interests and taonga;[18] and

9.3. the notion that tino rangatiratanga may be exercised by groups other than hapū and iwi, such as whānau and other groups, and according to their particular circumstances.[19]

10. Taheke 8C says:

10.1. There is a more appropriate way to achieve the purpose of the RMA in relation to the Ōkere River than that proposed in Plan Change 5.

10.2. The more appropriate way is to adopt the specific amendments set out in Mr Greg Carlyon's evidence.

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17 *New Zealand Maori Council v Attorney-General* (the *Lands* case) [1987] 1 NZLR 641 (CA); *New Zealand Maori Council v Attorney-General* (the *Broadcasting Assets* case) [1994] 1 NZLR 513 (PC); and *Te Runanga o Te Wharekauri Rekohu v Attorney-General* [1993] 2 NZLR 301 (CA).

18 See the *Lands* case at 664.

19 See, for example, Waitangi Tribunal *The Ngātiwai Mandate Report* (Wai 2561, 2017) at 78.

10.3. Mr Carylon's suggestions better reflect the mana whenua, ahi kā and kaitiakitanga that Taheke 8C holsd and exercisse in relation to the Ōkere River.

10.4. Mr Carylon's suggestions are also more consistent with the Treaty principles of partnership and active protection.

Mr Carylon's evidence

11. Some of the key statements in Mr Carlyon's evidence are:

11.1. The response required within Plan Change 5 must be nuanced beyond simply providing for the rights and interests of iwi and hapū in an aggregated sense.[20]

11.2. There are complex relationships across kaitiaki, ahi kā, mana whenua, iwi, and hapū.[21]

11.3. It is simplistic to consider issues can be addressed simply through iwi and hapū broadly.[22]

11.4. This is particularly the case for Taheke 8C as they have a long standing and uncontested relationship to the whenua and awa, and have demonstrated that throughout time as ahi kā, and more recently with their documented involvement in strategic planning allied to their interests.[23]

11.5. Statutory mechanisms in respect of iwi and hapū rights and interests are relatively new.[24]

11.6. Communication mechanisms that are needed for good decision making in a resource management context have not been in place.[25]

11.7. It is appropriate to formalise mechanisms of communication that avoid conflict:[26]

> ... it is appropriate for PC5 to formalise mechanisms for communication. This may avoid driving iwi, hapū, mana whenua, and ahi kā into a space where conflict is unable to be addressed. It will also assist by setting the framework for addressing differences of view. Ordinarily there would be tikanga amongst mana whenua that would address this, however within the context of the RMA, that is not present unless specifically provided for.

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20 See the statement of evidence of Mr Greg Carylon at [29].
21 See the statement of evidence of Mr Greg Carylon at [29].
22 See the statement of evidence of Mr Greg Carylon at [29].
23 See the statement of evidence of Mr Greg Carylon at [29].
24 See the statement of evidence of Mr Greg Carylon at [30].
25 See the statement of evidence of Mr Greg Carylon at [30].
26 See the statement of evidence of Mr Greg Carylon at [30].

12. At pp 12-25 of his evidence, Mr Carlyon sets out a table with 14 specific suggestions that address Taheke 8C's concerns.

Conclusion

13. The reasons why the panel should adopt Mr Carlyon's 14 suggestions are:

13.1. The uncontested evidence is that groups beyond hapū and iwi hold mana whenua and exercise ahi kā and kaitiakitanga at specific locations of the awa. Taheke 8C is one such group.

13.2. The uncontested evidence is that there are not existing and established lines of communication between hapū and iwi (on the one hand) and specific mana whenua groups such as Taheke 8C (on the other) in relation to the awa.

13.3. Plan Change 5 is premised on enhancing the relationship that iwi and hapū have with the awa, but does not acknowledge the relationship that other mana whenua and/or whānau based groups (like Taheke 8C) have with the awa or build in any link between hapū/iwi and those other groups.

13.4. In those circumstances, some mechanism is required to build in specific reference to, or protection of, interests beyond those of hapū and iwi.

13.5. Mr Carylon's suggestions mean that the Kaituna River Document would be recognised and provided for in a way that more appropriately recognises all mana whenua interests in the awa, including those of iwi, hapū and groups such as Taheke 8C.

13.6. The reference in s 6(e) of the RMA to "the relationship of Māori and their culture and traditions with the ancestral lands, water, sites, waahi tapu, and other taonga" is not restricted to the relationship that hapū and iwi have those places. Māori groups such as Taheke 8C clearly have a relationship with the awa in specific locations. Building in a more specific reference to those groups is more consistent with s 6(e).

13.7. Section 7(a) requires the panel to have "particular regard" to kaitiakitanga. It is the whānau of Taheke 8C who exercise kaitaikitanga where the Ōkere River adjoins Taheke 8C's lands.

13.8. Mr Carylon's suggestions are also more consistent with the Treaty principles of partnership, active protection and the notion that it is for Māori groups to determine for themselves who their representatives are. While Treaty settlements may be struck with large natural groupings of Māori and so typically at the iwi-level, Treaty principles are not restricted to those large groups. Groups such as Taheke 8C must (of course) be treated with fairly, reasonably, honourably and in good faith in any change to the Bay of Plenty regional policy statement. Their legitimate interests in relation to the Ōkere River should also (of course) be actively protected through any such change. Mr Carylon's suggestions strike a better balance in relation to those Treaty principles and interests.

13.9. Mr Carlyon's suggestions do not diminish recognition of the relationship that iwi and hapū have with the awa.

13.10. Mr Carylon's suggestions are designed to avoid future conflict as within Māori groups with interests in the awa.

13.11. There are no good reasons not to adopt the suggestions.

14. If necessary, the panel may wish to convene a conference of experts under the RMA, sch 1, part 4, cl 43(1)(b) to consider Mr Carylon's 14 suggestions in order to facilitate resolution of the issues raised by Taheke 8C.

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