

EXPERT WITNESS CAUCUSSING CONFERENCE AND JOINT WITNESS STATEMENT

IN THE MATTER OF	Proposed Change 5 to the Bay of Plenty Regional Policy Statement
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Date	21 October 2022
Venue	MS Teams

Witnesses	For
Lucy Holden	Bay of Plenty Regional Council
Greg Carlyon	Taheke 8C
Matthew Leighton	Western Bay of Plenty District Council
Simon Greening	Horticulture NZ
Tom Kay (sent apologies due to illness)	Forest & Bird
Jesse Brennan	Federated Farmers

JOINT WITNESS STATEMENT - PLANNING

1. Issues with RPS PC5 definition of riparian margin

Regional Policy Statement (RPS) Proposed Change 5 (PC5) definition:

Riparian Areas or Margins: A strip of land of varying width adjacent to a waterway which contributes or may contribute to the maintenance and enhancement of the natural functioning, quality and character of the waterway and its margins.

Regional Natural Resources Plan (RNRP) definition:

Riparian area or riparian margin: A strip of land of varying width adjacent to the bed of a stream, river, lake or wetland, which contributes or may contribute to the maintenance and enhancement of the natural functioning, quality and character of the stream, river, lake or wetland; and the natural character of the margins of streams, rivers, lakes and wetlands. For the purpose of this regional plan, the definition does not include land adjacent to artificial watercourses and ephemeral flowpaths.

Issues with the differences in definitions:

1. The PC5 definition does not explicitly exclude artificial watercourses whereas the RNRP definition does. 'Waterway' is not a defined term and could include artificial watercourses. Does 'waterway' include lakes?
2. The PC5 definition does not explicitly state that it is only to be used in the Kaituna River catchment, so could potentially be added to the RPS as a new definition to cover the whole region.
3. As a new definition inserted into the RPS, it has not been through a proper process, which raises natural justice issues. Additionally, the new definition is contrary to the RNRP definition that it sits above.
4. It is unclear for plan users which definition would be used in which area – would the RPS definition be used in the Kaituna River catchment and the RNRP definition be used elsewhere, or would the RPS definition then trump the RNRP definition? Currently it is clear for consent planners that the Regional Coastal Environment Plan (RCEP) definition is used in

the Coastal Environment Zone, and the RNRP definition everywhere else. The PC5 definition contributes a level of uncertainty and the definitions need to be aligned.

5. Would the PC5 definition have implications for the RNRP definition when the RNRP is reviewed/would a precedent have been set that the RNRP then needs to align with the RPS definition, even though the RPS definition hasn't been through proper process?

Summary of any agreed changes/key areas of discussion

Mr Carlyon, Mr Barsdell, Ms Brennan, Mr Leighton and Ms Holden agreed that, to address these issues, the RPS PC5 definition should be deleted. Consideration of a definition of riparian margins is more appropriate through a full RPS change process. A new RPS definition could then feed into the RNRP definition through a full RNRP change process. Any new RPS definition should be inserted through the appropriate channels in the interests of transparency and natural justice. Having a separate definition only for the Kaituna Catchment could be confusing to plan users and could be misinterpreted.

A Forest and Bird representative was not party to the discussion, but Mr Kay provided some thoughts via email, which are summarised below:

1. A specific definition of riparian margins for the Kaituna Catchment that includes artificial waterbodies to be consistent with the RMA and NPSFM is preferable to a 'do nothing' approach and having artificial watercourses continue to be exempt.
2. "In the Kaituna catchment" could be added to the definition.
3. The definition states a riparian area "contributes or may contribute to... maintenance and enhancement" but Mr Kay considers a riparian area can also contribute to degradation, for example if it is not vegetated or is frequented by stock.

The position of Forest & Bird is noted.

2. a) Significant Issue 2.12.4 – over-allocation of groundwater

Horticulture NZ suggested change (additions [blue underline](#), deletions ~~red strike-through~~):

2.12.4 Significant Issues affecting the Kaituna

Water demand is high and could pose a risk for springs, surface water bodies and associated tangata whenua, ecological and recreational values.

Current consented allocation exceeds water quantity limits in several sub-catchments of the Kaituna River, ~~and in parts of the underlying groundwater resource.~~ [however, allocation limits have not yet been determined for the groundwater resource. Despite this, over-allocation of the groundwater can have serious environmental effects.](#) Increasing water demand particularly for agriculture, horticulture, industrial and municipal uses continue to increase pressure on key values including tangata whenua, ecological and recreational values. This signals a need to assign and manage uses within surface and groundwater limits to provide for the well-being and key values of these water bodies and springs associated with them. Water demand is particularly high in the lower Kaituna River Catchment. Projected urban growth will also place increased demand on water in the lower Kaituna.

[Appropriate and suitable groundwater allocation limits should be set in accordance with the Freshwater Planning Process \(FPP\) set out in Section 80A of the Resource Management Act 1991. This should be done by giving effect to the National Policy Statement for Freshwater Management 2020 \(or any replacement National Policy Statement\) and in accordance with the National Objectives Framework.](#)

Regional Council suggested change (additions [blue underline](#), deletions ~~red strike-through~~):

2.12.4 Significant issues affecting the Kaituna

Water demand is high and could pose a risk for springs, surface water bodies and associated tangata whenua, ecological and recreational values.

~~Current consented allocation exceeds water quantity limits in several sub-catchments of the Kaituna~~

~~River, and in parts of the underlying groundwater resource.~~ Over-allocation of water can have serious environmental effects. Increasing water demand particularly for agriculture...

Summary of any agreed changes/key areas of discussion

Mr Greening accepted Regional Council's suggested wording.

2. b) Policy KR 4B Managing groundwater abstraction in the Kaituna River

Horticulture NZ suggested change (additions blue underline, deletions ~~red strike-through~~):

The challenge is to ensure there is sufficient water within the Kaituna River to provide for tangata whenua, ecological and recreational values for present and future generations whilst also providing for growth and economic, cultural and social well-being. This challenge is serious given current consented allocation exceeds water quantity limits in several sub-catchments of the Kaituna River ~~and also in parts of the underlying groundwater resource~~ and since suitable and acceptable groundwater allocation limits have not yet been set.

Regional Council suggested change (additions blue underline, deletions ~~red strike-through~~):

The challenge is to ensure there is sufficient water within the Kaituna River to provide for tangata whenua, ecological and recreational values for present and future generations whilst also providing for growth and economic, cultural and social well-being. This challenge is serious given current and projected demand for water. ~~consented allocation exceeds water quantity limits in several sub-catchments of the Kaituna River and also in parts of the underlying groundwater resource.~~

Summary of any agreed changes/key areas of discussion

Mr Greening accepted Regional Council's suggested wording.

3. a) Objective 41 references to groundwater

Western Bay of Plenty District Council (WBOPDC) suggested change (additions blue underline, deletions ~~red strike-through~~):

Objective 41

Water quality and the mauri of the water, including groundwater, in the Kaituna River is restored to a state which provides for ecosystem health, safe drinking water sources, human contact, threatened species and mahinga kai values.

Summary of any agreed changes/key areas of discussion

Mr Leighton was concerned that the objective wording assumes that water is already contaminated and therefore needs restoring. The following wording was agreed:

Objective 41

Water quality and the mauri of the water, including groundwater, in the Kaituna River is maintained or restored to a state which provides for ecosystem health, safe drinking water sources, human contact, threatened species and mahinga kai values.

3. b) Policy KR 4B references to groundwater

WBOPDC suggested change (additions blue underline, deletions ~~red strike-through~~):

Policy KR 4B

Managing groundwater abstraction in the Kaituna River Catchment for the protection of puna and springs

Summary of any agreed changes/key areas of discussion

The following wording was agreed:

Policy KR 4B

Managing groundwater abstraction in the Kaituna River [to protect puna](#)

4. Objective 43 – sustainable water allocation

Forest & Bird suggested change (additions [blue underline](#), deletions ~~red strike-through~~):

Objective 42

There is sufficient water quantity in the Kaituna River to support the mauri of rivers and streams and provide for tangata whenua, ecological and recreational values

~~Objective 43~~

~~Water in the Kaituna River is sustainably allocated and efficiently used to provide for the social, economic and cultural well-being of iwi, hapū and communities now and for future generations~~

Policy KR 4Ba

[Water in the Kaituna River is allocated in a way that prioritises the health and wellbeing of water bodies and freshwater ecosystems.](#)

Regional Council suggested change (additions [blue underlined](#), deletions ~~red strike-through~~):

Objective 42

There is sufficient water quantity in the Kaituna River to support the mauri of rivers and streams and provide for tangata whenua, ecological and recreational values

~~Objective 43~~

~~Water in the Kaituna River is sustainably allocated and efficiently used to provide for the social, economic and cultural well-being of iwi, hapū and communities now and for future generations~~

Policy KR 4Ba

[Water in the Kaituna River is sustainably allocated and efficiently used in a way that prioritises the health and wellbeing of water bodies and freshwater ecosystems, and provides for the social, economic, and cultural wellbeing of tangata whenua and communities now and for future generations.](#)

Summary of any agreed changes/key areas of discussion

Mr Kay could not attend due to illness so was not present during discussion of this change.

Mr Leighton accepted Regional Council's suggested wording.

5. a) Policy KR 7B: Enabling economic development opportunities (WBOPDC)

WBOPDC suggested change is to split the policy into two policies covering two concepts:

1. Economic opportunities for iwi and hapū;
2. Economic development that enhances the Kaituna and acknowledges its cultural connections.

Summary of any agreed changes/key areas of discussion

Mr Leighton considers the policy is missing what it was aiming to achieve, by enabling some activities that are enabled with or without the policy. Ms Brennan noted that Policy KR 7B of PC5 gives effect to Kaituna River Document Objective 8, desired outcome b.

Mr Leighton considers that if the policy is to be retained, the explanation text should be amended. For example, references to the East Coast Main Trunk Railway Line and the Rangiuuru Business Park do not appear to align with the purpose of the policy.

A suggested amendment is in Attachment 1: Proposed Change 5 RPS amendment version 5.1. Reference to the East Coast Main Trunk Line is to demonstrate the connectedness of the catchment with surrounding areas.

5. b) Policy KR 7B Enabling economic development opportunities (Federated Farmers)

Federated Farmers suggested change (additions blue underline, deletions ~~red strike-through~~):

KR 7B

Enabling certain economic development opportunities...

Or:

KR 7B

Enabling sustainable economic development opportunities...

Summary of any agreed changes/key areas of discussion

The following wording was agreed:

KR 7B

Enabling certain economic development opportunities...

6. Method KR 6

WBOPDC suggested change (additions blue underline, deletions ~~red strike-through~~):

Promote employment opportunities for tangata whenua through projects in the Kaituna River including providing:

- (a) Pest and silviculture management services
- (b) Fencing services
- ~~(c) Council reserves maintenance~~; and
- (d) Environmental monitoring.

Implementation responsibility: Regional Council, ~~city and district councils~~, Te Maru o Kaituna and iwi authorities

Summary of any agreed changes/key areas of discussion

The above suggested change was agreed.

7. Method 23T

WBOPDC suggested change (additions blue underline, deletions ~~red strike-through~~):

Method 23T: Retain and enhance public and cultural access to and along rivers and streams in the Rangitāiki River Catchment and Kaituna River

Retain and enhance safe public and cultural access to and along rivers and streams within the Rangitāiki River Catchment and Kaituna River by:

...

(c) Subject to (b) provide and maintain safe and identifiable public access points along the margin of the rivers and streams in the Rangitāiki River Catchment and Kaituna River.

...

(f) Working with communities, landowners and industries to consider opportunities to create appropriate access, including vehicle, walking, bicycle and waka access to the rivers [and streams](#).

Summary of any agreed changes/key areas of discussion

The above suggested change was agreed.

8. Objectives, anticipated environmental results and monitoring indicators: Objective 45

WBOPDC suggested change (additions [blue underline](#), deletions ~~red strike-through~~):

Anticipated environmental results (AER): [Healthy aquatic ecosystems, habitats and biological communities are protected or increased.](#)

Monitoring indicator: An observed [maintaining or](#) increase in the health of natural communities and habitats of indigenous flora, fauna and ecosystems in the Kaituna River and their riparian margins and wetlands.

Regional Council suggested change (additions [blue underline](#), deletions ~~red strike-through~~):

Anticipated environmental results (AER): Values of water (ecological, cultural, recreational and amenity) within the Kaituna River are ~~maintained~~ [protected and enhanced](#).

Summary of any agreed changes/key areas of discussion

Regional Council’s suggested wording for anticipated environmental results was agreed. Mr Leighton’s wording for monitoring indicator was agreed.

9. Matters raised in Taheke 8C submission regarding recognition of tangata whenua, mana whenua and ahi kā

Regarding Mr Carlyon’s recommendation to include the term ‘mana whenua’ throughout PC5¹ it was agreed that the term ‘mana whenua’ was not necessary if tangata whenua was included, given the RMA definition of tangata whenua.

Taheke evidence point	Caucusing outcome
1 and 2	<p>Mr Carlyon recommended additions to existing RPS policies IW 1B and IW 2B.</p> <p>Ms Holden’s position is that there is no scope to provide for the wording sought because these policies are not subject to change under PC5.</p> <p>Mr Carlyon’s position is there is scope to provide for the wording sought, as the proposed wording was the subject of submission evidence and speaks directly to the objectives and supporting policies of Proposed Change 5.</p>
3	<p>Mr Carlyon proposed the following wording:</p> <p>Policy KR 3B: Using mātauranga Māori held by tangata whenua, ahi kā, iwi and hapū to inform resource management decision making in the Kaituna River</p> <p>More time is required to consider the implications of including ahi kā in Policy KR 3B. Mr Carlyon and Ms Holden will address this point in evidence due 28 October 2022.</p>
4	<p>The following wording was agreed:</p> <p>Policy KR 7B: Enabling economic development opportunities for tangata whenua, ahi</p>

¹ As outlined in Mr Carlyon’s statement of evidence dated 21 September 2022

	<p>kā, iwi and hapū in the Kaituna River</p> <p>In considering the agreed wording under discussion point 5.b, the following policy title is recommended:</p> <p>Policy KR 7B: Enabling certain economic development opportunities for tangata whenua, ahi kā, iwi and hapū in the Kaituna River</p>
5	<p>Mr Carlyon proposed the following wording:</p> <p>Policy KR 9B: Recognising kaitiakitanga exercised by ahi kā, tangata whenua, hapū and iwi in the Kaituna River involves sustainable use, development and protection</p> <p>Mr Leighton raised the following concerns about including the term ahi kā in Policy KR 9B:</p> <ol style="list-style-type: none"> 1. It may introduce a potential for conflict between established kaitiaki groups and ahi kā. 2. Ahi kā may be appropriate to refer to in Taheke 8C's case, however are there other situations where it would not be appropriate/cause conflict? 3. It may broaden situations where kaitiaki need to be considered and involved to an impracticable level. 4. How flexible and open to interpretation the definition of ahi kā is. <p>Mr Dean Flavell advised that ahi kaa refers to “the burning fires”, which is an acknowledgement of the home people who have practiced traditional and continuous occupation of an area, whether water or land. The groups that claim ahi kaa can trace back to primary ancestors who first founded their tribal lands.</p> <p>More time is required to consider the implications of including ahi kā in Policy KR 9B. Mr Carlyon and Ms Holden will address this point in evidence due 28 October 2022.</p>
6	No recommended revision to Method KR 1.
7	<p>The following wording was agreed:</p> <p>2.12.4 Significant issues affecting the Kaituna River Issue 1</p> <p>Water demand is high and could pose a risk for springs, surface water bodies and associated tangata whenua, ahi kā, ecological and recreational values</p>
8	<p>Mr Carlyon's recommended wording:</p> <p>Objective 40</p> <p>The traditional and contemporary relationships that iwi, and hapū, tangata whenua and ahi kā that exercise kaitiakitanga have with the Kaituna River are recognised, strengthened, enhanced and provided for.</p> <p>More time is required to consider the implications of including the term ahi kā to this objective. Mr Carlyon and Ms Holden will address this point in evidence due 28 October 2022.</p>
9	See discussion under point 14.
10	<p>The following wording was agreed:</p> <p>Objective 42</p> <p>There is sufficient water quantity in the Kaituna River to support the mauri of rivers and streams and provide for tangata whenua, ahi kā, kaitiaki, ecological and recreational values.</p>
11	The following wording was agreed:

	<p>Objective 43 Water in the Kaituna River is sustainably allocated and efficiently used to provide for the economic, social and cultural wellbeing of iwi, hapū, tangata whenua, ahi kā, kaitiaki and communities now and for future generations.</p> <p>In considering the wording discussed under point 4, the following change is recommended: Objective 43 Water in the Kaituna River is sustainably allocated and efficiently used to provide for the economic, social and cultural wellbeing of iwi, hapū and communities now and for future generations.</p> <p>Policy KR 4Ba Water in the Kaituna River is sustainably allocated and efficiently used in a way that prioritises the health and wellbeing of water bodies and freshwater ecosystems, and provides for the social, economic, and cultural wellbeing of tangata whenua, ahi kā, kaitiaki and communities now and for future generations.</p>
12	<p>Mr Carlyon recommended the addition of a new policy as follows: New policy: Recognise the development plan prepared by Taheke 8C that provides for sustainable use of resources within the awa and adjacent whenua.</p> <p>The Taheke 8C Development Plan is included as attachment 2 to this joint witness statement.</p> <p>Mr Carlyon advised that the Taheke 8C Development Plan went through a statutory process with Rotorua Lakes Council (RLC) and is included in the Rotorua District Plan under Appendix 5 – Development Plans.</p> <p>The Taheke 8C Development Plan, through Table A5.9.2 of the Rotorua District Plan, provides a set of rules to control activities within the development plan area. These are mostly activities managed under the district plan such as tourism activities and honey processing activities. However, some of the rules control activities also managed under the Regional Natural Resources Plan (RNRP) such as earthworks and disturbance of vegetation. Some of these rules overlap and potentially conflict with RNRP rules. For example, the disturbance of vegetation outside a significant natural area or significant geothermal feature is a permitted activity in the Rotorua District Plan throughout the development plan area. However, land and soil disturbance by vegetation clearance is also subject to rules under the RNRP; some disturbance is permitted subject to conditions, but if the activity does not meet the permitted rule, resource consent is required. The rules of both the district and regional plans must be followed.</p> <p>RPS Policy IW 1B, which seeks to enable the development of multiple-owned Māori land, appears to provide more benefit to Taheke 8C than adding the recommended policy to recognise the Taheke 8C Development Plan under the PC5.</p> <p>Insertion of Mr Carlyon’s recommended new policy is not recommended for the following reasons:</p> <ol style="list-style-type: none"> 1. The Taheke 8C Development Plan is a section of the Rotorua District Plan. 2. The activity status of rules in the Rotorua District Plan for the Taheke 8C development area potentially overlap/conflict with rules for similar activities in the Regional Natural Resources Plan. The rules of both plans must be followed. <p>Mr Carlyon notes the advice given to the Freshwater Commissioners that the Taheke 8C Development Plan could be adopted either as a policy or listed within a schedule of relevant documents for decision makers consideration. He maintains the view that it is appropriate to recognise this plan noting that Rotorua District adopted it within their District Plan.</p>
13	<p>Mr Carlyon’s recommended change: Objective 45</p>

	<p>The Kaituna River’s wetlands, aquatic and riparian ecosystems are restored, protected, and enhanced to support indigenous species while recognising the rights and interests of mana whenua, tangata whenua, ahi kā and kaitiaki.</p> <p>Mr Carlyon explained that the addition is to acknowledge the inseparable connection between ahi kā and those natural resources. Some Māori landowners consider it inappropriate for decisions to be made in relation to natural values on private land without accounting for the cultural lens and rights and interests of Māori. The addition is not intended to upset the primary purpose of the objective, it qualifies it and notes the interest of those at place.</p> <p>Mr Carlyon would accept a change from ‘recognising’ to ‘acknowledging’ in his recommended addition:</p> <p>Objective 45: The Kaituna River’s wetlands, aquatic and riparian ecosystems are restored, protected and enhanced to support indigenous species while acknowledging the rights and interests of tangata whenua, ahi kā and kaitiaki.</p> <p>More time is required to consider the implications of the addition to this objective. Mr Carlyon and Ms Holden will address this point in evidence due 28 October 2022.</p> <p>Mr Carlyon noted the inseparable connection of tangata whenua to the whenua and awa and the need for Objective 45 to explicitly recognise that.</p>
14	<p>The following wording was agreed:</p> <p>Objective 46 Te Maru o Kaituna in collaboration with tangata whenua, iwi, ahi kā, kaitiaki, and the wider community and primary industry groups, to enable environmental, economic, social, educational and cultural aspirations for the restoration, protection and enhancement of the Kaituna River.</p> <p>The term ‘Māori landowners’ was included in Mr Carlyon’s evidence; however, it was agreed that in this case, ahi kā covers Māori landowners.</p>

Attachment one – Amended provisions
Attachment two – Taheke 8C Development Plan

An amended set of provisions identifying the agreed amendments is attached.

Signed:

Witness	Signature	Date
Lucy Holden		26 October 2022
Greg Carylton		26 October 2022

Matthew Leighton		26 October 2022
Simon Greening		26 October 2022
Jesse Brennan		26 October 2022