

**BEFORE THE FRESHWATER HEARINGS PANEL**

**IN THE MATTER OF**            the Resource Management Act (**RMA**)

**AND**                            Proposed Change 5 to the Bay of Plenty  
Regional Policy Statement

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**REPLY EVIDENCE OF LUCY HOLDEN**

**ON BEHALF OF THE BAY OF PLENTY REGIONAL COUNCIL TOI MOANA**

**DATED: 28 October 2022**

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## INTRODUCTION

1. My name is Lucy Holden. I am a Senior Planner with the Bay of Plenty Regional Council ("Regional Council").
2. I wrote the original s42A report 'Overview report on submissions' for Proposed Change 5 (Kaituna River) to the Bay of Plenty Regional Policy Statement ("PC5") and the associated s32AA report.
3. I attended the hearing and listened to the evidence and submissions presented, and I also attended the Planner caucusing on 21 October 2022.

## SCOPE OF EVIDENCE

4. This reply evidence responds to the matters raised at the hearing. This evidence will briefly address the matters agreed in the Joint Witness Statement filed on 26 October 2022 ("JWS") and provide more detail and recommendations in relation to those issues that remain outstanding between the parties. I have also considered the need for a s32AA analysis of the agreed changes as well as those that I am proposing to the provisions. Lastly, I address the issue of whether the references to "Maketu" should have a macron.
5. Attached to the reply evidence is a set of amended provisions I am recommending be adopted in PC5.
6. Recommendations from the reply evidence are shown in blue underline for additions and ~~red strikethrough~~ for deletions.

## AGREED CHANGES

### Over-allocation

7. Horticulture NZ presented expert evidence in support of their requested amendments to Significant Issue 2.12.4 and the explanation to Policy KR 4B, which largely relate to the reference to currently consented allocation exceeding limits.
8. I considered the relief further and agree that it is not necessary to refer to an existing allocation status given the impending changes to introduce new limits. At the time PC5 was drafted, 2024 was some time away, but this date is fast approaching. We do not know what those limits, or therefore the allocation status, will be as a result of those upcoming changes, and there are no operative limits for groundwater currently. To avoid having to make further consequential amendments to PC5 text in relation to allocation status, it is preferable to remove any reference to this.
9. We agreed changes to these provisions that focus on the issues caused by over-allocation and to acknowledge the challenges presented by current and projected water demand in the catchment.

### References to groundwater

10. Some submitters, including TCC and WBOPDC, were concerned about the inclusion of groundwater in Objective 41 and Policy KR 4B.
11. I remain of the view that groundwater can and should be referenced in the relevant policies because the Kaituna River means all tributaries, including waters of its catchment and groundwater, and because integrated management of the river, as required under the RMA and the NPSFM, requires recognition of the interconnectedness of ground and surface water, and of quantity and quality.
12. However, following further discussion at caucusing I agree that Objective 41 as currently worded suggests that groundwater quality is degraded and needs to be restored, despite there being no evidence that this is the case.
13. The planners agreed changes to the objective so that water can be *maintained* or *restored*, whichever is relevant depending on existing water quality for surface or groundwater, provided that the overall aim of the objective is met, which is to ensure that it is to “*a state which provides for ecosystem health, safe drinking water sources, human contact, threatened species and mahinga kai values*”. In my opinion this continues to recognise and provide for Objective 3 of the River Document, and in a manner consistent with the RMA.
14. I have also agreed with Mr Leighton that Policy KR 4B would appropriately be more focussed on the protection of puna, being a key focus of the River Document objective.

### Enabling economic development opportunities – Policy KR 7B

15. Both WBOPDC and Federated Farmers sought amendments to this policy.
16. Following consideration of the evidence and discussion at caucusing, I agree with Mr Leighton for WBOPDC that the explanation to the policy suggests that broader economic development opportunities are sought to be enabled than are provided for in the policy itself, and in the River Document. Rather than changing the words of the policy, I agreed that the explanatory text should instead be amended to align with the policy.
17. I also agree with Federated Farmers that including reference to “certain” opportunities would be helpful, particularly given the policy heading is referenced in other sections of the plan. This does not change the intent or effect of the policy, as it is clear that the scope of opportunities to be enabled are limited to those which respect and promote greater understanding of cultural associations with the river and restore, protect or enhance the river’s wellbeing. The inclusion of “certain” would be interpreted and applied in this context, i.e. that the “certain” opportunities are those that meet those criteria.

### Methods, AER and Monitoring Indicator

18. For the reasons explained in Mr Leighton’s evidence, I agree that Methods KR6 and

23T should be amended as set out in the JWS. I accept that the reasons expressed for retention of Method KR6 may not apply to equally to territorial authority reserves maintenance and so this can be deleted.

19. I also agree that additional AER and a monitoring indicator relating to ecosystems, habitats and biological communities would be appropriate given the outcomes the objectives and policies seek to achieve. I have one suggested amendment to the wording of the Monitoring indicator as set out in the JWS which is to refer to “an observed ~~maintenance~~ ~~aining~~ or increase”, simply for grammatical reasons.

## **PROVISIONS THAT HAVE NOT BEEN AGREED**

### **Objective 43 and the NPSFM priorities**

20. Forest & Bird sought amendments to the quantity and allocation provisions to ensure that the priorities in the NPSFM were reflected, i.e. that the health and wellbeing of waterbodies and freshwater ecosystems was prioritised and that any allocation was subject to that.
21. The Panel invited Mr Kay for Forest & Bird to suggest revised wording for how Objective 43 could be shifted into a policy that addressed this issue. I considered the wording provided by Mr Kay on 14 October. The amended policy removes any reference to the provision for social, economic and cultural wellbeing of tāngata whenua and the communities, with the result being that it focusses only on the protection aspects of Objective 42 and not the latter part, which is to provide for tāngata whenua, ecological and recreational values. It also removes reference to efficient use and sustainability of allocation, both of which I consider to be important aspects of the provision as worded.
22. While I agree that it is appropriate to reflect the priority to be afforded to the health and wellbeing of the river and its freshwater ecosystems, I consider it consistent with the NPSFM and the RMA to also acknowledge the value of the use of water for tāngata whenua and the community. To do so recognises and provides for the objectives of the River Document and specifically Objective 5.
23. I consider there to be a connection between Objective 42 and the new policy: to maintain sufficient water quantity in the river to provide for values, the allocation of water needs to be sustainable and its use efficient.
24. I have proposed an amended version of Forest & Bird’s proposed Policy KR 4Ba that retains the reference to efficient use and sustainable allocation, and the provision for social, economic and cultural wellbeing. This should be able to be provided for while still prioritising the health and wellbeing in a manner consistent with the NPSFM.
25. I have suggested the inclusion of new explanatory text in the PC5 amendment version to explain new Policy KR 4Ba by illustrating the importance of water efficiency.

### **Taheke 8C recognition of tāngata whenua, mana whenua and ahi ka**

26. As explained in the JWS, several of the amendments sought by Taheke 8C and

detailed in Mr Carlyon's evidence were agreed.

27. However, in a number of instances the planners noted that more time was needed to assess the implications of the proposed changes and that this would be addressed in reply evidence.
28. At the hearing, Taheke 8C's Planner Mr Greg Carlyon explained that the additional wording would add strength to the position of Taheke 8C by acknowledging them and others who are at place. As soon as a policy directs to engage with iwi and hapū, that's where the emphasis is and where the focus of engagement goes. Mr Carlyon's additions generally provide emphasis on those who are ahi kā. Mr Carlyon considered that this would make resource management more complicated, but this is entirely appropriate.
29. My opinion on the appropriateness of changes to the provisions suggested by Mr Carlyon is influenced by the following considerations:
- a) The NPSFM uses "tangata whenua". The RPS also largely uses the term "tangata whenua".
  - b) There is no reference to ahi kā in either the NPSFM or the RPS; the term ahi kā is not defined in these documents. There is no definition of ahi kā proposed by Taheke 8C.
  - c) The definition of "tangata whenua" under the RMA (and the NPSFM) "means the iwi, or hapū, that holds mana whenua over that area". Kaitiakitanga is the exercise of guardianship by the tangata whenua of an area".
  - d) The RPS includes a definition of kaitiaki, being "a person or agent who cares for taonga; may be spiritual or physical. Guardian, steward, but the meaning of kaitiaki in practical application may vary between different hapū and iwi." This is broader than the definition for "kaitiakitanga".
  - e) Section 35A RMA places a duty on local authorities to keep records about iwi and hapū to assist in achieving the purpose of the Act. Regional Council holds and maintains these records (and allocates resources for that purpose), and uses these to provide guidance to, for example resource consent applicants.
  - f) There is no requirement to keep and maintain records of ahi kā; Regional Council does not hold this information and does not allocate resources to collect or maintain it.
  - g) There has been no detailed analysis undertaken of the potential implications of broadening the provisions of PC5 to include all those who could be considered "ahi kā" in relation to the Kaituna River catchment.
  - h) Regional Council takes an inclusive and open approach to Māori where

matters of concern are raised. However, particularly where an objective or policy would trigger the need to engage with Māori, reference to a broad range of groups could make application of the provision not practicable or achievable, depending on the number of different groups and in light of the Council holding no information in relation to these wider groups.

30. Where a provision is *enabling*, I consider it appropriate that it be extended to provide more explicitly for groups that Mr Carlyon has sought be included. This is consistent with Policy IW 1B which is to enable development of multiple-owned Māori land, including geothermal resources. While Taheke 8C would already take the benefit of this policy, I accept that having enabling policy in PC5 would provide additional support. For that reason, I agree that Policies KR 7B and 9B could be amended to include reference to *tāngata whenua* (which includes *mana whenua*) and *ahi kā*. To ensure consistency, Policy KR 9B would also include *iwi* and *hapū*.
31. Where a provision already recognises a *wide range* of values or interests, I also consider that it is appropriate that it be explicit that it includes the wider Māori interests sought by Taheke 8C. This is because the more explicitly inclusive approach will not significantly change the scope, meaning, or outcome of the relevant provisions. For that reason, I have agreed that Objective 42 (sufficient water quantity to support a range of values) and related Significant Issue 2.12.4, and Policy KR 3B (*mātauranga Maori*), could include additional references as set out in the JWS. This also applies to Objective 46.
32. However, where a provision is protective or would expand a provision beyond what is intended, including where the practical implications would be significant or at least unquantified at this stage, I remain of the view that it would be inappropriate to expand it in the way sought by Taheke 8C. This applies to the following:

#### **Objective 40**

33. Taheke 8C recommended the following changes to Objective 40:

The traditional and contemporary relationships that *iwi, ~~and~~ hapū, tāngata whenua and ahi kā that exercise kaitiakitanga* have with the Kaituna River are recognised, strengthened, enhanced and provided for.

34. Taheke 8C's recommended changes to the objective would essentially require plan users to consult with all *ahi kā* if relevant to a proposal, for example a resource consent application.
35. Regional Council does not keep records of *ahi kā* in the region. Information about *ahi kā* in the Kaituna catchment could be vast. Keeping accurate, up-to-date records of *ahi kā* in the catchment may not be practicable or achievable for the Regional Council.
36. If Regional Council is unable to keep a record of *ahi kā*, any resource consent application in the Kaituna catchment may need to be publicly notified, regardless of its scale or effects, because it is not possible to identify or reach everyone the objective says must be recognised. I consider that these groups are provided for by the

requirement to consider adverse effects on a landowner or person living on the land (such as ahi kā). It is also unclear how councils would give effect to this direction in the regional and district plans given the significant number of relationships that would need to be provided for.

37. I maintain my view that it would not be appropriate to expand this objective in the way sought by Taheke 8C.

#### **Objective 45**

38. Taheke 8C recommends the following addition to Objective 45:

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 tangata whenua, ahi kā and kaitiaki](#).

Or:

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](#).

39. Objective 45 of PC5 recognises and provides directly for Objective 7 of the Kaituna River Document. The focus and purpose of Objective 45 is the restoration, protection, and enhancement of the environment in the Kaituna catchment. I consider that the proposed addition takes the focus away from the objective's main purpose.
40. If activities are compromising the cultural and natural values of that land, a level of oversight needs to remain to keep the focus on the environment. There are other provisions directed at enabling use and development.
41. The rights and interests of private landowners are more appropriate to be addressed through a full Schedule 1 change process.
42. I maintain my view that it would not be appropriate to expand this objective in the way sought by Taheke 8C.

#### **Operative Policies IW 1B and 2B**

43. Taheke 8C recommended the following changes to operative RPS Policies IW 1B and 2B:

**Policy IW 1B:** Enabling development of ~~multiple-owned~~ Māori land [with particular regard for the interests of mana whenua or tangata whenua when exercising kaitiakitanga or ahi kā](#)

**Policy IW 2B:** Recognising matters of significance to Māori [including those mana whenua or tangata whenua exercising kaitiakitanga or ahi kā](#)

44. Mr Carlyon considers 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.

45. PC 5 is a confined change to the RPS. The purpose of PC5 is to recognise and provide for the vision, objectives and desired outcomes in the Kaituna River Document; it is not to change the whole RPS. A full review of the RPS will be notified in 2024. The changes do not directly relate to recognising and providing for the vision, objectives and desired outcomes in the Kaituna River Document and are of much broader effect across the region.
46. Policy IW 1B is not subject to change under PC5. The 'Note to Reader' on page 3 of the PC5 provisions as notified explicitly addresses the scope of the proposed change. It explains that the references to existing RPS provisions in Table 10c are shaded grey to show they are operative provisions to which no change is proposed and no submissions in relation to their content will be accepted by Council. The purpose of them being referenced is to identify how the change sits in the wider context of the RPS, with those other provisions being relied on as also contributing to achieving the River Document objectives.
47. A change to an existing RPS policy needs to be considered through a full Schedule 1 process. Changing the policy at the end of the PC5 process raises issues of natural justice.
48. Taheke 8C's proposed additions to these policies is not supported given they have much broader impact across the region, do not relate to the River Document, and are to operative provisions that are not within the scope of PC5.

#### **New policy – Taheke 8C Development Plan**

49. Taheke 8C recommend the addition of the following new policy:
 

[New policy: Recognise the development plan prepared by Taheke 8C that provides for sustainable use of resources within the awa and adjacent whenua.](#)
50. The Taheke 8C Development Plan is included as a section of the Rotorua District Plan. It went through a Schedule 1 process to be incorporated in that Plan.
51. The purpose of PC5 is to enable the Kaituna River Document to be considered in RPS objectives and policies, not to enable the plan of another council or private landowner.
52. The activity status of rules in the Rotorua District Plan for the Taheke 8C development area potentially overlap/conflict with rules for similar activities (such as earthworks and vegetation clearance) in the Regional Natural Resources Plan. The rules of both the Rotorua District Plan and Regional Natural Resources Plan must be followed.
53. During the first RPS PC5 hearing of 11 October 2022, Mr Carlyon posited that Taheke 8C's proposed policy created the potential for the Taheke Development Plan to be a relevant matter for a consent authority when considering a resource consent application. Rules under the Rotorua District Plan are not a matter for consideration

when assessing applications for resource consent under the Regional Natural Resources Plan. Regardless of whether the policy is included in the RPS or not, the Development Plan could be a matter relevant to certain applications under s104(1)(c) of the RMA when considering a resource consent application, and that relevance and its effect on any proposal would be subject to a full process.

54. I maintain my view that Taheke 8C's recommended additional policy is inappropriate and unnecessary. The Development Plan can be considered where it is relevant, but without its inclusion or reference even in an appendix or attachment in the notified version so that people could submit on it, it would be inappropriate to reference it in the RPS at this late stage.

#### **DEFINITION OF RIPARIAN MARGIN**

55. Forest & Bird sought amendments to the definition of riparian margin to explicitly include artificial watercourses. For the reasons outlined in the JWS, including that it is different to the current definition for riparian margin in this area under the Regional Natural Resources Plan, I have recommended the definition of riparian margin is deleted.

#### **MAKETU – MACRON**

56. During the first RPS PC5 hearing of 11 October 2022, Mr Dean Flavell, Chair of Te Maru o Kaituna, noted that Maketu should have no macron on the u. In the development of Te Tini a Tuna (Kaituna Action Plan) this was addressed and the macron was removed. For this reason, I recommend the macron is removed from Maketu in PC5.

#### **S32AA ANALYSIS**

57. Section 32AA of the RMA requires a further evaluation of any changes proposed since the original evaluation report was completed. This relates to changes to objectives and provisions (which are the policies and methods that implement or give effect to the objectives of the RPS).
58. All the recommended changes to PC5 resulting from planner caucusing and recommended in this evidence aim to clarify the intent, remove potential confusion or ambiguity or better recognise and provide for the vision, objectives and desired outcomes of Kaituna He Taonga Tuku Iho (the Kaituna River Document) in a manner consistent with the purpose of the Act.
59. None of the recommendations substantively change the objectives and provisions of PC5 in a way that would be characterised as a "different" approach from that addressed in the evaluation report. Accordingly, the underlying cost and benefits of the objectives and provisions will not vary from those that have been previously discussed in the Section 32 Evaluation Report, Version 4.0 dated June 2021 and the Section 32AA Evaluation of Changes dated August 2022. For that reason, I consider that the conclusions of the evaluation undertaken in those documents continue to apply to the changes proposed since they were written.

A handwritten signature in blue ink that reads "L. Holden." The signature is written in a cursive, slightly slanted style.

Lucy Holden  
Senior Planner, Bay of Plenty Regional Council

28 October 2022