

RECOMMENDATION OF AN INDEPENDENT HEARING PANEL

PROPOSED CHANGE 5 TO BAY OF PLENTY REGIONAL POLICY STATEMENT

Kaituna River

Recommendation Report of the Independent Hearing Panel appointed by the
Chief Freshwater Commissioner pursuant to clause 59 of Schedule 1 of the
Resource Management Act 1991

March 2023

Commissioners:

Antoine Coffin (Chair)

Commissioner Rawiri Faulkner

Commissioner Andrew von Dadelszen

Contents

Executive Summary	4
Abbreviations and glossary	5
Introduction and Background	7
Appointment of Hearing Panel and Delegations.....	9
Notification of Hearings and Council Officer Reports	9
Hearing and Appearances	10
Site Visits	10
Conflicts of Interest	11
Procedural matters and late submissions	11
Key Dates in Process.....	11
Report Outline.....	12
Relevant Statutory Provisions and Plans Considered.....	12
The Hearing of Submissions	14
Matters of Contention.....	17
Implement the NPS-FM in PC5.....	17
Good Management Practice versus Best Management Practise	18
Lack of Engagement with Māori land trusts/owners	20
Recognition of ‘Māori’	21
Policy KR 7B - Economic development.....	22
Recreation values and activities.....	23
Consideration of Groundwater	24
Objective 41 – Water Quality	24
Objective 42 – Water Quantity	25
Objective 44 - Strengthen V Enhance	25
Maketū or Maketu	26
Rivers and streams	27
Method 23S.....	27
Objective 43	28
Definition of Riparian Areas or Margins.....	28
Addition of Te Tumu Urban Growth Area	29
Section 32A and 32AA Evaluation Report	29
Reasonably practicable options	30
Recommendations	31
Appendix 1 – Amended track change version of Proposed Change 5 (Kaituna River).....	32
Appendix 2 – Summary of decisions on submissions	33

Executive Summary

Antoine Coffin (Chair and Chief Freshwater Commissioner appointment), Rawiri Faulkner (tangata whenua nominee) and Andrew von Dadelszen (Council nominee) have been appointed as an independent freshwater hearing panel to consider and make recommendations on Proposed Change 5 (PC5) for the Kaituna River.

PC5 is based on a requirement of the Tapuika Claims Settlement Act 2014. The Settlement Act requires the Regional Policy Statement (RPS) to recognise and provide for the vision, objective and desired outcomes in the Kaituna River Document to the extent that they relate to resource management issues of the region and are consistent with the purpose of the RMA.

The Kaituna Document titled “Kaituna He Taonga Tuku Iho – A Treasure Handed Down.” was prepared by Te Maru o Kaituna River Authority and released in June 2018.

Proposed Change 5 proposes to amend resource management issues, objectives, policies and methods of the RPS to achieve the above requirement.

Most submitters support the change, however seek amendments to address their concerns and interests.

The hearing, site visit and expert planning conferencing were held during October and November 2022. We are grateful to the parties who endeavoured to find agreement on many of the matters in contention.

There were a few matters that were not able to be agreed between parties. We have endeavoured to address these on the documents and evidence before us. We are cognisant that comprehensive regional council responses to the NPS-FM 2020 are not far in the future as well as full reviews of all the plans under the Natural and Built Environment Act. Several matters will clearly require consideration in the wider context of planning such as groundwater, economic development and sophisticated approaches to Māori participation in resource management processes and the inter-entity relationships.

Lastly we would like to acknowledge the late Moana Boyd who we understand had a significant part to play in the preparation of proposed change 5.

Abbreviations and glossary

Abbreviations as found in this decision	Means...
the Act and the RMA	Resource Management Act 1991
“CMA”	The coastal marine area of the region
the Council	Bay of Plenty Regional Council
BOPRC	Bay of Plenty Regional Council
F&B	Royal Forest and Bird Society
HortNZ	Horticulture New Zealand
KHTTI	Kaituna He Taonga Tuku Iho – A Treasure Handed Down. The Kaituna River Document.
MfE	Ministry for the Environment
NPS	National Policy Statement
NPS-FM	National Policy Statement for Freshwater Management (with dates specified) e.g. NPS-FM 2020
NZCPS	New Zealand Coastal Policy Statement 2010
PSGE	Post Settlement Governance Entity
Reporting Officer(s)	S42A Reporting Officer(s)
RPS	The Bay of Plenty Regional Policy Statement
S42A report	The Section 42A report prepared by staff of BOPRC
“TCSA” and “Settlement Act”	Tapuika Claims Settlement Act 2014
the change or PC 5	Proposed Change 5 to the Regional Policy Statement
the region	The area administered by the Bay of Plenty Regional Council
TLAs	Territorial Local Authorities

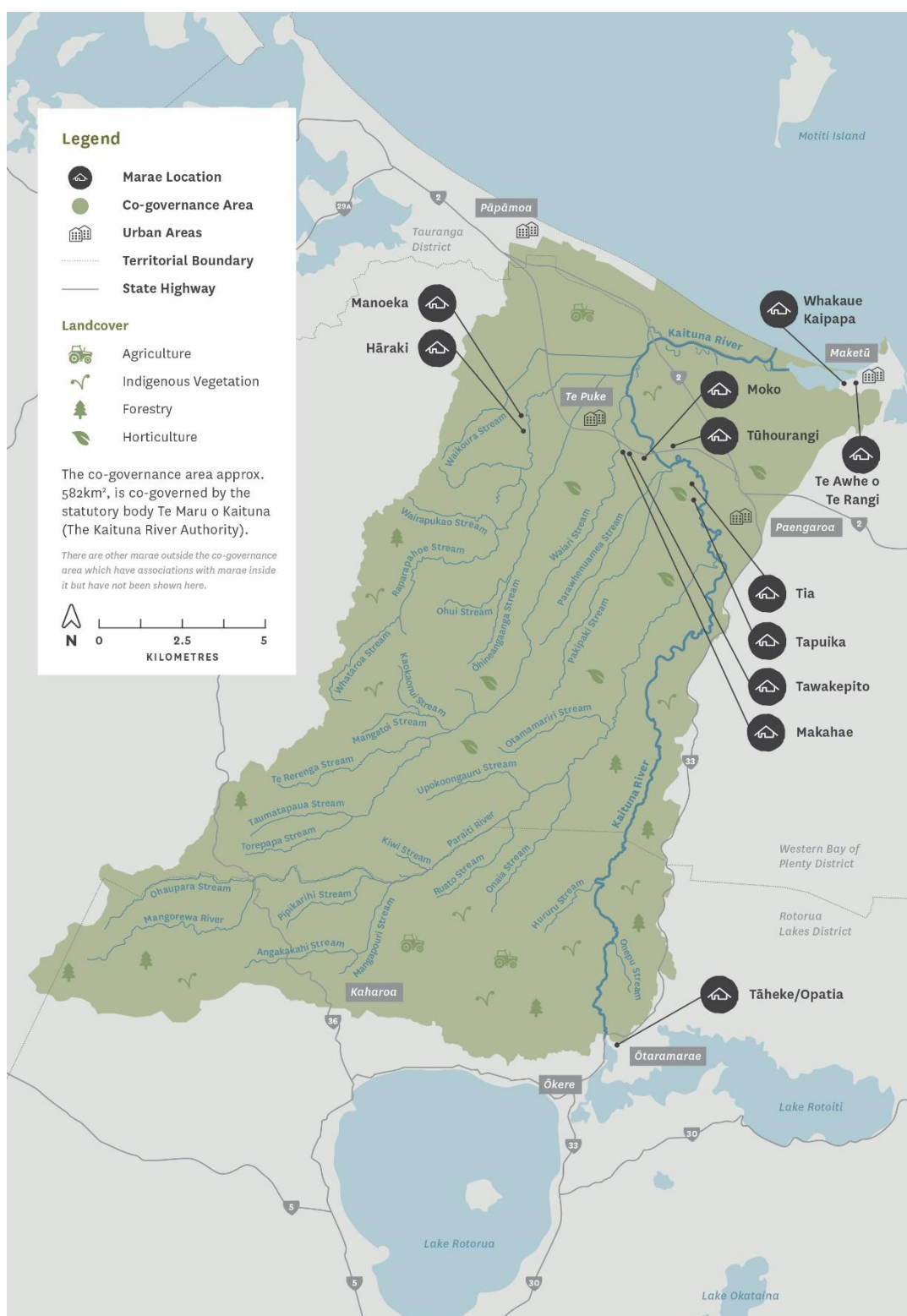
Glossary of Māori terms used in this decision	Means...
Ahi kaa	Literally the 'long fires', the people of a lace who have kept it warm (locals)
Maunga	Mountains
Hau kainga	Locals - people of that place
Kaitiaki	guardians
Rongoa	Medicine
Ngā kōrero	Oral presentations
Mauri	Life force
Mahinga kai	Food gathering places
Tangata whenua	Same meaning as in the RMA - in relation to a particular area, means the iwi, or hapu, that holds mana whenua over that area
Tikanga	Traditions, the right ways of doing things
Tuna	Eels
Ngā kōrero	Everything that is being said

Introduction and Background

1. PC5 is based on a requirement of the Tapuika Claims Settlement Act 2014. The Settlement Act requires the Regional Policy Statement (RPS) to recognise and provide for the vision, objective and desired outcomes in the Kaituna River Document to the extent that they relate to resource management issues of the region and are consistent with the purpose of the RMA.¹
2. Proposed Change 5 proposes to amend resource management issues, objectives, policies and methods of the RPS to achieve the above requirement. In particular this includes introducing a new Kaituna River section into the Treaty co-governance section 2.12 that comprises:
 - 6 significant resource management issues for the Kaituna River;
 - 7 Kaituna River objectives;
 - 9 Kaituna River policies;
 - 6 Kaituna River methods of implementation; and
 - Expansion of 5 existing Rangitāiki River methods to apply to the Kaituna River.
3. The Kaituna Document titled “Kaituna He Taonga Tuku Iho – A Treasure Handed Down.” was prepared by Te Maru o Kaituna River Authority and released in June 2018.
4. The “Kaituna River Document” has a moemoeā or vision for the Kaituna River.
E ora ana te mauri o te Kaituna, e tiakina ana hoki mō ngā whakatupuranga ō nāianeī, ō muri nei hoki – The Kaituna River is in a healthy state and protected for current and future generations.
5. The River Document is an aspirational document, noting that the waters of the Kaituna River have, since time immemorial, sustained those living within its catchment. The Forum has come to the conclusion that the Kaituna River is no longer providing an abundance of food; the water quality is not always good enough for swimming or drinking; the river is losing its special qualities and liveliness, becoming unfit for holding rituals and ceremonies; young people no longer have strong ties with the river; and the river has not been looked after and its water quality is unsatisfactory to those who hold mana whenua (authority over the land).

¹ Section 123 Tapuika Claims Settlement Act 2014

6. **FIGURE 1** MAP OF KAITUNA RIVER CATCHMENT



Following approval of the Kaituna River Document, draft PC5 to the RPS was prepared. Draft PC5 was subject to independent review, community, iwi/hapū and stakeholder consultation and released for informal comment on 24 August 2020. The updated and approved PC5 was notified on 29 June 2021.

Appointment of Hearing Panel and Delegations

7. Our appointment commenced with BOPRC confirming the Council nominations, a process for recommending a tangata whenua nomination and the Freshwater Commissioner appointments.²
8. In accordance with section 80A (5) of the RMA:
 - (a) the Chief Freshwater Commissioner must convene a freshwater hearings panel to conduct the public hearing of submissions on the freshwater planning instrument:*
 - (b) the freshwater hearings panel must conduct the public hearing of submissions in accordance with its powers and the procedures set out in Part 4 of Schedule 1:*
 - (c) after the public hearing of submissions is concluded, the freshwater hearings panel must make recommendations to the regional council on the freshwater planning instrument:*
 - (d) the regional council may accept or reject any recommendation. However,—
 - (i) the regional council must provide reasons for rejecting a recommendation; and*
 - (ii) a person who made a submission on the freshwater planning instrument may make an appeal in accordance with subpart 2 of Part 4 of Schedule 1.**
9. Antoine Coffin (Chair and Chief Freshwater Commissioner appointment), Rawiri Faulkner (tangata Whenua nominee) and Andrew von Dadelszen (Bay of Plenty Regional Council nominee) have been appointed as an independent freshwater hearing panel to consider and make recommendations on Proposed Change 5 (PC5).

Notification of Hearings and Council Officer Reports

10. PC5 was publicly notified on 29 June 2021. Submissions closed on 10 August 2021 with fifteen submissions received. One submission was received late. It was accepted using the provisions set out in s37 and 37A of the RMA by the Regional Policy and Planning Manager acting under delegated authority from the Council. Further submissions closed on 9 November 2021 with eight further submissions received.
11. The Panel has been provided a number of documents to support the consideration of the proposed change. These include:
 - A section 32 Evaluation Report dated June 2021.
 - Copies of the submissions.
 - A summary of submissions and further submissions with staff recommendations.
 - An Officers Report “Overview report on submissions” dated 30 August 2022.
 - The Kaituna River Document - Kaituna He Taonga Tuku Iho – A Treasure Handed Down.
 - The Kaituna Action Plan – Te Tini a Tuna, 2019-2029.

² BOPRC Strategy and Policy Committee, Open Minutes. 4 May 2021.

- A notified and track changed version of the changes to the Bay of Plenty Regional Policy Statement.
- A section 32AA evaluation report dated August 2022.

Hearing and Appearances

12. Hearings were held on 11 October and 11 November 2022. We heard from nine (9) submitters at our hearing on 11 October 2022. These included:
- Te Maru o Kaituna River Authority represented by Dean Flavell (chair of the Trust)
 - Western Bay of Plenty District Council represented by Matthew Leighton (Policy and Planning Manger)
 - The Proprietors of Taheke 8C & Adjoining Blocks Incorporation represented by Andrew Irwin and Loretta Lovell(Legal counsel), Peter Mason, Tawhiri Morehu and Greg Carlyon (expert planner)
 - Horticulture New Zealand represented by Simon Greening
 - Bay of Plenty Federated Farmers and Rotorua/Taupō Federated Farmers represented by Jesse Brennan
 - Bay of Plenty Regional Council Rivers and Drainage represented by Hemi Barsdell
 - Eastland Generation Limited represented by Megan Exton
 - Royal Forest and Bird Protection Society of NZ (Forest & Bird) represented by Natasha Sitarz/Darell Van Hoof/Tom Kay (on zoom)
 - Te Tumu Landowners Group represented by Jeff Fletcher.
13. At our closing hearing (online) on 11 November 2022, we heard from:
- Taheke 8C Trust
 - Council Officers (Lucy Holden)
 - legal counsel (Rachel Boyte) providing reply submissions on behalf of BOPRC.

Site Visits

14. A site visit was conducted on 12 November 2022. We were accompanied by Mr Jackson Efford, (Bay of Plenty Regional Council Integrated Catchment Officer).
- We visited the Pāpāmoa Hills for a vantage point of the lower catchment.
 - We then visited the Kaituna cut and re-diversion, noting the lack of filtration of contaminants from the Ford Road canal outlet to the Kaituna River.
 - We observed sites along SH33 such as AFFCO NZ, Waiari water supply, the proposed site of Z Energy, forestry and Geothermal Eastland Generation.
 - We walked around the Okere Falls reserves, flood gates and travelled back to Pāpāmoa observing points of interest.

Conflicts of Interest

15. Conflicts of Interest were declared as part of the appointment process. There were no issues raised by submitters before or during the hearing.

Procedural matters and late submissions

16. We issued five minutes during the decision-making process. The first of these set out the timetable for reports and evidence. Our second minute adjusted dates for evidence to accommodate submitters.
17. Our third minute directed planning caucusing and the preparation of a joint witness statement to address the main matters of contention from the hearing. These matters were:
 - The definition of riparian margin
 - Significant Issue 2.12.4 – over-allocation of groundwater
 - Policy KR 4B Managing groundwater abstraction in the Kaituna River
 - Objective 41 and Policy KR 4B references to groundwater
 - Objective 43 – sustainable water allocation
 - Policy KR 7B and Method KR 6 - Enabling economic development opportunities
 - Method 23T
 - Objectives, anticipated environmental results and monitoring indicators - Objective 45
 - Matters raised in Taheke 8C submission regarding recognition of tangata whenua, mana whenua and ahi kā
18. The witness conferencing took place on 21 October 2022 and a signed JWS dated 26 October 2022 was provided to the Panel together with the Taheke 8C Development Plan and amended provisions.
19. Our fourth minute proposed a process for the closing hearing on 11 November 2022, and a further information request regards a specific issue statement. The fifth minute clarified the panel view regarding closing submissions of Council and further submissions from parties.

Key Dates in Process

29 June 2021	Notification of RPS Change
10 August 2021	Submissions closed
9 November 2021	Further submissions closed
30 August 2022	Overview Report of Submissions
11 October 2022	Hearing
11 November 2022	Closing hearing
14 March 2023	Recommendation Report to Council

Report Outline

20. This report has been set out in three main parts. The first part is the introduction and background to the preparation and notification of the PC5, the hearing appearances and site visits, procedural matters and key dates. The second part of the recommendation report addresses matters of contention. We have tried to approach each matter consistently by identifying who raised the issue, the views of the parties and our finding. The third part of the report summarises our final overall recommendations. The fourth part of the report is the Appendices which contain our tracked change version of the proposed change and a summary of decisions on submissions.
21. We have endeavoured to use plain language and avoid the verbatim cut and paste of officer reports and submissions by using references and summarising wherever possible.

Relevant Statutory Provisions and Plans Considered

22. The RMA (ss61-62) provides direction on the matters Regional Council shall consider when changing an RPS. An RPS must:

Give effect to:

- New Zealand Coastal Policy Statement 2010
- National Policy Statements and National Environmental Standards
- National Policy Statement for Renewable Energy Generation
- National Policy Statement for Electricity transmission
- National Policy Statement for Freshwater Management 2020 (NPS-FM)

Have regard to:

- Any management plans and strategies prepared under other Acts.
- Relevant entries on the New Zealand Heritage List / Rarangi Kōrero register required by the Heritage New Zealand Pouhere Taonga Act 2014.
- Regulations relating to ensuring sustainability, or the conservation, management, or sustainability of fisheries resources (including regulations or bylaws relating to taiapure, mahinga mataitai, or other non-commercial Māori customary fishing).
- The extent to which the RPS needs to consistent with policy statements and regional plans of adjacent regional councils.

And take into account:

- Any relevant planning document recognised by an iwi authority and lodged with the council.
- The matters in a planning document prepared by a customary marine title group under section 85 of the Marine and Coastal Area (Takutai Moana) Act 2011 that relate to a part of the common marine and coastal area outside the customary marine title area of the relevant group.

23. A full evaluation of these documents is contained in the section 32 report (sec32 Report) prepared by council officers.³ During the course of the hearing submitters drew on aspects of policies and objectives from the documents above to strengthen or add weight to their recommendations, however, there was no suggestion that the relevant documents had not been given effect, regarded or taken into account as appropriate.
24. The proposed change to the RPS is designed in accordance with the Tapuika Settlement Act 2014, and assists the Council to carry out its functions so as to achieve the purposes of the RMA.
25. PC5 does not give full effect to the NPS-FM as it is primarily proposed to give effect to the Tapuika Claims Settlement Act, however we have endeavoured to consider as far as is practicable the NPS-FM 2020. Care has been taken to ensure this policy framework aligns with and is consistent with NPS-FM requirements. A separate RPS change is programmed along with coordinated changes to the RNRP, to give effect to the NPS-FM at a regional level. It is important to emphasise that Proposed Change 5 (Kaituna River) does not constrain RPS and RNRP changes under the Essential Freshwater Policy Programme to give effect to the NPS-FM 2020 requirements.⁴
26. A section 32 and sec32AA evaluation accompanies PC5 that considers the most appropriate way to achieve objectives having regard to their efficiency and effectiveness, actual and potential environmental effects and reasonable alternatives. Where the Panel has deviated from these recommendations and amendments as notified and recommended by Officers, we have provided a further sec32AA evaluation.
27. There are a number of relevant iwi and hapū management plans that have an influence on the Kaituna River and its tributaries. These include:
- Ngati Rangiwewehi Iwi Environmental Management Plan (2012)
 - Te Rautau Te Rahui Taketake – Ngati Whakaue ki Maketu Hapū Management Plan (2018-2028)
 - He Mahere Taiao mo Nga Wai o Te Arawa - Te Arawa Lakes Environmental Plan (2019)
 - Ngā Tikanga Whakahaere Taonga o Ngāti Pikiao Whānui – Iwi Resource Management Plan (1997)
 - Waitaha Iwi Management Plan (2014)
 - Tapuika Environment Management Plan (2014)
 - Tūhoromatanui – Ngā Potiki Environmental Plan (2019-2029)
28. The section 32 Report identified the key common themes in the respective iwi and hapū management plans. These issues are relevant and appear to be consistent with the thrust of the objectives in the Kaituna River Document. We note that a review and assessment of

³ Section 32 Evaluation Report. June 2021.

⁴ Section 32 Evaluation Report. June 2021. page 14

each of the above plans has been undertaken.⁵ This gives us confidence that relevant iwi planning documents have been taken into account.

29. We have not been made aware of any relevant entry on the New Zealand Heritage List/Rārangi Kōrero required by the Heritage New Zealand Pouhere Taonga Act 2014. In any case PC5 seeks to promote and provide information about cultural heritage protection.

The Hearing of Submissions

DAY ONE – Tuesday 11th October 2022 at Papamoa Community Centre

#	Name	Submitter FS #	Submitter appearing
1	Te Maru o Kaituna River Authority	15	Dean Flavell
2	Western Bay of Plenty District Council	4/FS04	Mathew Leighton
3	The Proprietors of Taheke 8C & Adjoining Blocks Incorporation	9/FS08	Andrew Irwin/ Loretta Lovell
4	Horticulture New Zealand	8/FS03	Simon Greening
5	Bay of Plenty Federated Farmers and Rotorua/Taupō Federated Farmers	13/FS07	Jesse Brennan
6	Bay of Plenty Regional Council Rivers and Drainage	FS01	Hemi Barsdell
7	Eastland Generation Limited	2/FS06	Megan Exton
8	Royal Forest and Bird Protection Society of NZ	14	Tom Kay (Heard on Zoom)
9	Te Tumu Landowners Group	7	Jeff Fletcher

30. **SUBMITTER #1 – Te Maru o Kaituna River Authority - Dean Flavell**
- Speaking as Chair of Te Maru o Kaituna River Authority, Dean Flavell stated that he has been on this journey for most of his life. He said that in 2009 he sat as Chair Commissioner for the diversion of the head of the Kaituna River.
 - He noted that back then “we had a strategy, but the part missing was the iwi voice.”
 - He said that a River Document was produced, but it got "ripped to bits". The key question was “Not what humans wanted, but what the River needed to survive”. He said that the aim is to protect the River into a healthy state that was fit for purpose for future generations.

⁵ Section 32 Evaluation Report. June 2021. Appendix 3

- Mr. Flavell stated that the aim is about inclusiveness to bring everyone together, including Iwi, TLAs, Regional Council and all landowners. He explained that substantial progress had been made.
- Mr Flavell expressed the River Authority's strong support for the Proposed Change.
- Mr Flavell also stated that Maketu should not have a macron included in its spelling.

31. **SUBMITTER #2 – Western Bay of Plenty District Council – Matthew Leighton**

- Mr Leighton stated that he was the Policy & Planning Manager at the District Council. He said that he has been involved in this proposal for the last 5 years and had lived in Te Puke for the previous 9 years.
- Mr Leighton stated that Te Maru is a co-governance entity. He said the authors had taken a "twist" in that this proposal hasn't included items discussed at the Te Maru meetings.
- On the subject of ground water, Mr Leighton stated the need to emphasise that it is the puna and springs that flow, rather than the ground water per se. He stated that these links needed to be better articulated.
- Mr Leighton agreed with the need for iwi and hapū development, but he stated that there is also the necessity to encourage economic development generally to ensure that it aligns with the health of the river.

32. **SUBMITTER #3 – Taheke 8C – Andrew Irwin, Ms Lovell, Mr Carlyon & Mr Mason**

- Mr Irwin stated that he acts as Legal Counsel for Taheke 8C Incorporation. He stated that both ancestors and the current owners have interests at Okere River, but we are neither iwi nor hapū. He stated that the whanau of Taheke 8C hold mana whenua of the Okere River.
- Mr Irwin said that the Proposed Change 5 gives too much emphasis to iwi and hapū, and we need to establish better lines of communication between all stakeholders.
- Mr Irwin stated that Taheke 8C approved the thrust of PC5, but with 14 amendments. He said the obligation to recognise and apply to this document is not satisfactory, noting Section 6 of the RMA and the need to take into account kaitiakitanga under s7. He said PC5 needs to build a connection to groups like Taheke 8C to ensure inclusivity so that all parties that have a relationship with this rohe are recognised.
- Mr Carlyon stated that he was a Planner employed to support Taheke 8C. He acknowledged that PC5 does acknowledge Treaty Settlements, but needs to go beyond that. He highlighted Taheke 8C's concerns about the dangers in relation to the river, stating that it is not tika to allow people to risk their lives, as it affects the mana of the river.
- Mr Carlyon emphasised that PC5 doesn't undermine Taheke 8C's progress to develop geothermal interests.

- When questioned about the Whanau based organisation, Mr Irwin stated that Taheke 8C see themselves as hapū affiliated with Ngati Pikiao. He said that in the 1950's they did incorporate because that was the practice at that time, but they do take the whanau engagement very seriously.
33. **SUBMITTER #4 - HORTICULTURE NZ – Simon Greening & Richard Thornburrow**
- Simon Greening stated that a big issue for HortNZ is around water allocation; stating that Bay of Plenty Regional Council's evidence is based around inaccurate data. He stated that it is wrong to say that the catchment of ground water is over allocated. He said that interim groundwater limits is just that, and not scientifically robust.
 - Mr Greening suggested that there are 2 possible outcomes. The first is that you could lock in ground water limits - that would be very detrimental for the horticultural industry; or two, you could allow more allocation, and then risk over-allocation. His suggestion is to redefine the word "allocation" more broadly to await satisfactory (robust) scientific data to be secured.
 - Mr Greening stated that there is a need to separate surface water from ground water, noting that surface water can be over-allocated, but ground water is not. He asked that an interim period be enacted. He stated that the RPS sets out high level issues, but allocation has not gone through a public process to determine robustness.
 - Mr Greening stated that HortNZ wished for Objective 40 to be either removed or strengthened.
34. **SUBMITTER #5 – Federated Farmers – Daryll Jensen & Jesse Brennan**
- Mr Jensen stated that is the current Vice President of the local Federated Farmers, and Jesse Brennan is a Policy Advisor. He stated that Federated Farmers broadly support with the intent of this Proposed Plan Change but do want to change the wording from "Best Management Practice" to "Good Management Practice".
 - Mr Jensen said they have no problem with KR7B, but they don't like KR9B.
35. **SUBMITTER #6 – Bay of Plenty Regional Council Rivers & Drainage – Hemi Barsdell**
- Mr Barsdell noted that his organisation was opposed to two of Forest & Bird's submission points.
36. **SUBMITTER #7 – Eastland Generation – Megan Exton**
- Ms Murphy stated that Eastland is developing a Geothermal Energy Plant at the Okere River site, in conjunction with Taheke 8C Incorporation.
 - Ms Murphy submitted in support of Taheke 8C, asking for the removal of structures within the river, as these impeded cultural and recreational access.

37. **SUBMITTER #8 – Royal Forest & Bird Society of NZ – Tom Kay (via Zoom)**
- Mr Kay made a request to simplify the language, especially with regards to drainage terminology.
 - Mr Kay strongly preferred the retention of “Best Management Practice”.
38. **SUBMITTER #9 – Te Tumu Landowners Group – Jeff Fletcher**
- Mr Fletcher stated that this group represents 14 Trusts plus Ford Land Holdings. He said this included 760 hectares which will house 6,500 residential homes, and a population of 15,000 people.
 - Mr Fletcher noted that this development will have more than 6km of frontage onto the Kaituna River, making them a substantial stakeholder in this process.

Matters of Contention

39. All submitters are generally supportive of the proposed change, whilst some changes have sought to clarify or more strongly reflect the interests and issues of the submitters. Matters of contention are mostly in the text of objectives, policies and methods.
40. We have set out the key areas of contention with a summary of the issues raised, the views of the parties and our findings. Key issues of contention include:
- “Good Management Practice” versus “Best Management Practice”
 - Recognition of Māori by Taheke 8C
 - Iwi and hapū economic development
 - Recreational activities
 - Linkage of “ground water” and “surface water” – including allocation
 - Water quality and quantity objectives
 - Strengthen V Enhance
 - Method 23
 - Objective 23 as a policy
 - Riparian margins

Implement the NPS-FM in PC5

41. Forest and Bird sought the use of PC5 to implement the NPS-FM. The Overview Report explains that this proposed change is primarily giving effect to the Tapuika Claims Settlement Act 2014 requirements to recognise the Kaituna River Document.

42. We heard from BOPRC officers that a comprehensive review of the RPS and regional plans is intended to be completed by December 2024 as part of the essential freshwater package of reviews.
43. This was accepted by Forest and Bird at the hearing, whilst querying whether there were opportunities for consistency and better aligned objectives, policies and methods.

Good Management Practice versus Best Management Practise

44. Forest and Bird submitted in support of the use of best management practises, in particular as it relates to Objective 44 and Policy KR 5B.⁶ They sought other amendments to strengthen and clarify the application of best management practises. HortNZ also supported (submission 8-6) Objective 44 as notified.⁷

45. Objective 44 and Policy KR 5B set out the management approach to land-use in the Kaituna River.

Obj 44 - The environmental well-being of the Kaituna River is enhanced through best management practices.

Policy KR 5B – Enhance the mauri of the Kaituna River by ensuring rural production, commercial and industrial activities minimise nutrient losses by implementing best management practices including...

Minimising may not be sufficient or appropriate in all cases. For example in relation to a new activity or change in land use. Best management practises can be part of a regulatory approach as well as to support non-regulatory methods.

46. The Staff Overview Report provides a comprehensive description of the options considered and the view that good management practices (**GMP**) should be favoured due to best management practice (**BMP**). The Council Officer considers that from a practical sense the shift from “best” to “good” does not mean a downgrading of any outcome that would be experienced on the ground. GMP reflects the national approach to ensuring practical delivery of improved farm management practices as part of a suite of requirements designed to deliver environmental outcomes.⁸
47. The staff overview report is in contrast to the section 32 evaluation report where it is stated that Objective 44 seeks a similar outcome to these existing RPS objectives 27 and 29, but they are not sufficient to recognise and provide the desired outcomes contained in the Kaituna River document under Objective 6. Objective 29 seeks to ensure land uses are

⁶ Submission of Royal Forest and Bird. Pages 6 and 8.

⁷ HortNZ. Submission 8-6.

⁸ Staff Overview Report. 30 August 2022. para 6.139

appropriate to the characteristics and capacity of the land, whereas Objective 44 sets a higher standard requiring best management practice. The sec32 evaluation goes further to say it is acknowledged that Objective 44 has the potential to result in some additional costs to landowners within the Kaituna River Catchment, as it seeks best management practices for land use practices to represent the outcomes sought by Kaituna River document and Te Maru o Kaituna, in particular under Objective 6. This is consistent with and supported by a wide range of projects already underway within the catchment and costs to achieve desired outcomes in the Kaituna River document will not be entirely attributable to the proposed objective.⁹

48. The Sec32 report provides some background to the PC10 (Rotorua Lakes Nutrient Management) and the consideration of best v good management practice, the outcomes of which was the use of good management practice. Feedback from the farming industry including Federated Farmers supported good management practice. Despite the analysis supporting the use of GMP over BMP in PC10, both Te Maru o Kaituna and Regional Council's Strategy and Policy Committee considered it appropriate that the RPS should retain an aspirational BMP objective. The officer considers it is debateable that 'good' management practice doesn't necessarily equate to 'improved land management practice' as set out in Objective 6 of the Kaituna River document.
49. We consider that consideration of Objective 8B "Rural land management is improved over time by adopting best practice techniques, taking advantage of technological and information advances and through more efficient use of inputs such as fertiliser, stock or crop quantity and/or outputs such as discharge quality and quantity limits" as well as the suite of objectives set out in the Kaituna Document.
50. In relation to Policy KR 5B Forest & Bird (further submission FS01-10) opposes Federated Farmers' submission point, stating that best practices are necessary for better ecological outcomes for freshwater.
51. HortNZ (further submission FS03-12) opposes Forest & Bird's submission point; HortNZ supports implementation of BMPs through a mix of regulation, industry incentives and industry leadership. Eastland Generation and Federated Farmers oppose the submission point. Federated Farmers do not support the amendment sought to control nutrient inputs.
52. The staff recommended all 'best management practice' references in Policy KR 5B be changed to 'good management practice' consistent with recommendations on Objective 44 consistent with above. (refer paragraphs 6.134 to 6.142 of Overview Report).
53. During our site visit of the lower catchment we observed pasture farm 'pugging', the general lack of riparian vegetation cover and few setbacks across lowland farms. At the confluence of the Kaituna River and the Maketu Estuary we could smell the paru water in drains and outlet to Kaituna River. The smell was unmistakable and powerful. If we are to take the evidence before us at face value, the status quo is good management practice. In contrast

⁹ Sec32 Report. Section 6.4, page 36.

we did observe some specific investments in wetland restoration (best management practice).

54. Our view is that best practice in this sensitive environment is appropriate and necessary to achieve the environment outcomes sought in the Kaituna Document. In particular:
- Obj 3 – Water quality and the mauri of the water in the Kaituna River are restored to a healthy state and meet agreed standards.
 - Obj 4 - there is sufficient water quantity in the Kaituna River to:
 - a. Support the mauri of rivers and streams.
 - b. Protect tangata whenua values.
 - c. Protect ecological values.
 - d. Protect recreational values.
 - Obj 6B - Rural land management is improved over time by adopting best practice techniques, taking advantage of technological and information advances and through more efficient use of inputs such as fertiliser, stock or crop quantity and/or outputs such as discharge quality and quantity limits.
 - Obj 7 - Ecosystem health, habitats that support indigenous vegetation and species, and wetlands within the Kaituna River are restored, protected and enhanced.
55. We are not convinced that good practice will be sufficient to achieve these outcomes, in light of what we observed. We recommend that “Best management practice” is appropriate for Objective 44 and Policy KR 5B.

Lack of Engagement with Māori land trusts/owners

56. Taheke 8C submitted that they are seeking a “right for consultation by the Council”, have their “own objective or acknowledgement that when the Plan Change affects its land or interests that Taheke will be consulted”, and that Taheke 8C “should have a voice as it relates to proposed actions on or through its land and where the Okere River is adjacent to it”.¹⁰
57. We heard at the hearing that Taheke 8C has not been a party to the formal consultation with iwi and hapū through the respective iwi authorities and post settlement governance entities. They had been consulted as part of the ‘community’ consultation for the draft version of the PC5. This was a source of contention and frustration for the representatives of the trust. At the hearing legal counsel made the point that they could not go back and were looking forward.
58. We received a summary of the issues raised by Taheke 8C and adjoining trusts in the sec32 Report as well as a response to the issues raised.¹¹

¹⁰ Submission of Taheke 8C. 10 August 2021. Pages 5 and 7.

¹¹ Section 32 Evaluation Report. Pages 17-20

59. They have sought a number of common amendments to the policies that identify who should be engaged and consulted. This matter is addressed below in our report.
60. We acknowledge the submitter’s insights into the lack of formal communication arrangements between iwi PSGE’s, iwi authorities and the respective members of the iwi/hapū including land trusts. We consider that there are advantages by having an inclusive and meaningful dialogue between iwi PSGE’s and Māori land trusts. We expect these conversations and discussions would improve input into statutory processes and decision-making. We agree that more sophisticated engagement processes are needed in the future to identify and recognise the relevant interests, values and perspectives of tangata whenua (as a diverse and dynamic group). We have not promoted a framework for inclusion in the RPS through PC5, believing that work should be a wider consideration as part of the review of the RPS, regional plans and engagement strategies of Council.

Recognition of ‘Māori’

61. Taheke 8C sought a number of common amendments to the policies that recognise distinct and nuanced Māori roles and statuses that ensure Taheke 8C are engaged and consulted as kaitiaki and mana whenua distinct from iwi and hapū. This included wider references to ahi kā, kaitiaki and mana whenua.¹²
62. The outcome of the expert witness conferencing and joint witness statement was some suggested amendments to the text of four policies (KR 3B, KR4B, KR7B, KR9B) - five objectives (40, 42, 43, 45, 46) and one Significant Issue (2.12.4). They had a similar flavour in that they sought to add the terms “tangata whenua”, “ahi kā”, “kaitiaki”, and in a couple of instances “iwi and hapū”. Taheke 8C and BOPRC noted their desire to consider the changes more fully in evidence to be presented at the closing hearing.
63. The BOPRC report was “conceptually...not opposed” to the proposed amendments. However, BOPRC considered the changes would represent a substantive shift in approach, the practical effect of which cannot be fully understood and assessed (under s32) without detailed further consideration and wider engagement.¹³
64. We share a similar view in that the use of the term “Māori” in resource management is very general and more specific terms can be helpful in the implementation of objectives, policies and methods. However, we share some nervousness of introducing terms that are not referred to in the RMA, national direction and other parts of the RPS. For these reasons alone we think there is need for some reservation. Further we note that this matter has not been subject to a rigorous interrogation. We did not receive expert evidence and comparative examples from other policy documents and plans.

¹² Submission of Taheke 8C. 10 August 2021 and Mr Carlyon’s Statement of Evidence dated 21 September 2022.

¹³ Reply submissions on behalf of BOPRC. 11 November 2022. para 5

65. We also make the observation that the term ahi ka which is not in the RMA is importantly not referred to in the body text or glossary of the Kaituna River Document. And surprisingly “kaitiaki” is only referred to once as part of a descriptive narrative relating to “taniwha”, in favour of the ethic of guardianship, Kaitiakitanga.

66. We note the Joint witness Statement reference to manawhenua, a term that is part of the RMA definition of tangata whenua.

“in relation to a particular area, means the iwi, or hapū, that holds mana whenua over that area “. ¹⁴

67. As we understand it was agreed that the term ‘mana whenua’ was not necessary if tangata whenua was included, given the RMA definition of tangata whenua.¹⁵ However, we do note that Mr Carlyon for Taheke 8C has still promoted the use of “mana whenua” and “iwi and hapū”. We are of the view that the additional terms are included within the definition of tangata whenua and well understood by practitioners and superfluous in the objectives and policies.

68. In summary, the Panel does not support the introduction of terms ahi ka, kaitiaki and the repetitive use of “mana whenua” and “iwi and hapū”. The terms ahi kā and kaitiaki are not consistent with the language used in the Kaituna River Document and their introduction may have unforeseen consequences.

69. We agree with the view of Regional Council that the implications of their use are simply incapable of being identified or assessed at the present time.

Policy KR 7B- Economic development

70. This policy seeks to enable economic development opportunities of iwi and hapū as it relates to the Kaituna River. We understand that the genesis of this policy was:

Obj 5 - Water from the Kaituna River is sustainably allocated and efficiently used to provide for the social, economic and cultural well-being of iwi, hapū and wider communities, now and for future generations;

Obj 8 - Te Maru o Kaituna in collaboration with iwi and the wider community, enable environmental, economic, social, educational and cultural aspirations for the restoration, protection and enhancement of the Kaituna River; and more particularly:

¹⁴ RMA, Part 1, Interpretation.

¹⁵ Joint Witness Statement. 21 October 2022. Point 5

Obj 8b - Economic development opportunities for iwi and hapū which respect the cultural associations they have with the Kaituna River; promote greater understanding of those associations; and restore, protect or enhance the well-being of the Kaituna River.

71. Submitters¹⁶ sought amendments to the policy by recommending various text to limit and constrain economic development. We received several alternative amendments ranging from adding the words “certain” or “sustainable” to splitting the policy into two categories, one for iwi and hapū economic opportunities and one for economic development that enhances cultural connections.
72. We mostly agree with the staff recommendation in the Overview Report¹⁷ and 6.241 (page 37), agree with sec32AA. We think that a simple approach that is framed around the intentions of Objectives 5, 8 and 8b is required. We recommend:

Policy KR 7B: Enabling sustainable economic development opportunities for iwi and hapū in the Kaituna River.

Enable sustainable economic development opportunities for iwi and hapū which respect and promote greater understanding of cultural associations with the Kaituna River and restore, protect or enhance the river’s well-being.

Recreation values and activities

73. Taheke 8C have sought a number of changes to policies to reflect their safety concerns for recreational activities (kayaking, rafting) adjacent to their lands on the Okere River. These changes include deleting Policy KR 8B which enables recreational activities along the Kaituna River, deleting the words “recreational” from Method S which addresses structures which may impeded cultural and recreational access, and emphasising the rights and interests of tangata whenua, ahi kā and kaitiaki.
74. We understand that the objectives, policies and methods in PC5 apply to the entire catchment and are not designed or intended to apply to a very specific part in a bespoke way. We don’t think a nuanced approach to exclude any particular places and activities is appropriate in an RPS. Health and safety regulation exists and is not appropriate for RPS to be determinative in this regard.
75. We heard from the Regional Council confirming that they are currently reviewing the Navigational Safety Bylaw 2017. They suggested and we agree that this is a more appropriate avenue for addressing public safety and access to dangerous stretches of the river. Opportunities will be provided for Taheke 8C to be involved in that process.¹⁸

¹⁶ WBOPDC, HortNZ and FedFarmers

¹⁷ Overview Report. Para 6.241, page 37

¹⁸ Reply submissions of BOPRC. para 60.

76. We have supported the views of the Regional Council in this regard and recommend that no changes be made to Policy KR 8B, Method S

Consideration of Groundwater

77. Some submitters, including TCC and WBOPDC, were concerned about the inclusion of groundwater in Objective 41 and Policy KR 4B and recommended changes. HortNZ recommended a number of changes to Significant Issue 2.12.4 and Policy KR4B.
78. Dean Flavell, Chair of Te Maru o Kaituna confirmed for us that groundwater is an intrinsic part of freshwater (in this catchment).
79. The Council officer was 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.
80. Following caucusing, the council officer was of the view 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.¹⁹
81. We acknowledge the parties' efforts to agree on wording for Objective 41, Policy KR 4B, and Significant Issue 2.12.4.
82. We have accepted the planning caucusing on this matter recorded in the Joint Witness Statement.

Objective 41 – Water Quality

83. All submitters wrote in support of improving water quality (Objective 41), with Forest & Bird asking for a timeframe deadline of 2030 to achieve the restored mauri of the water.
84. The site visit to the Kaituna Cut highlighted to the Independent Hearing Panel that the likes of the Ford Road drainage outlet into the Kaituna River was exiting into the river in a heavily degraded state. The logical solution would be for water to be filtered prior to reaching the Kaituna River via restored wetlands.
85. The Independent Hearing Panel resolved to include as a recommendation for the Kaituna River Authority to include a Method to ensure that where-ever possible water flowing into

¹⁹ Reply evidence of Lucy Holden. 28 October 2022. para 12

the Kaituna River is first be filtered using developed wetlands as a filtering mechanism. The responsibility for this development will fall upon the River & Drainage Scheme that the drainage scheme is part of.

Objective 42 – Water Quantity

86. Objective 42 is a provision agreed between the expert planners, but Regional Council staff submitted to the view that it is in the nature of a protective provision, and that to include the agreed wording would in fact expand its application well beyond what was intended or what has been able to be assessed.
87. The proposed change in the JWS was:
“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.”
88. This objective focusses on instream values and requires those giving effect to it, i.e., through regional plans, to ensure that there is sufficient water quantity remaining in a river to provide for listed values. Regional Council has stated that it has a reasonable understanding of the tāngata whenua, ecological and recreational values of the river. However, to give effect to the objective would require Regional Council to engage with everyone who has ahi kā and who meets the RPS definition of kaitiaki in order to ensure that their values are also reflected in e.g. minimum flows. Resource consent applicants would also need to engage with ahi kā and kaitiaki in addition to tāngata whenua groups. There are already a sizeable number of groups that must be engaged in planning and consenting. The suggested change would extend this much further than any other of the RPS provisions and would result in those owning land next to the river having equal input alongside tāngata whenua. That approach has not been discussed with tāngata whenua as part of a full process and was certainly not signalled in PC5 engagement. The implications of extending the objective this way, i.e. to cover the values of an unidentified number of additional people or entities, are unknown and could well be significant. We have reported on this matter earlier in our recommendations.
89. We are confident that Taheke 8C will be able to influence planning and consenting where this is relevant to its level of interest and will be able to be fully involved in, and input into, the 2024 NPSFM implementation process.
90. Upon reflection, the Hearing Panel concurs with the Regional Council staff view and it does not support the change proposed in the JWS to Objective 42 to include ahi kā and kaitiaki at this stage.

Objective 44- Strengthen V Enhance

91. Objective 40 as notified states “the traditional and contemporary relationships that iwi and hapū have with the Kaituna River are recognised, strengthened, enhanced and provided for”.

92. HortNZ seeks removal of the word “strengthen” as, in their view, it is covered by the word enhance, and strengthen is not a familiar term in planning terminology. Forest and Bird also seek changes to the Objective to make it more consistent with the NPS-FM. They have recommended deleting all the text after the word recognised and replacing it with “restored and supported”. Te Arawa Lakes Trust and HNZPT support Objective 40 as notified.
93. We note that the word strengthen has come directly from Objective 2C of the Kaituna River document:
- Iwi and hapū associations with the Kaituna River are strengthened through recognition of iwi/hapū management plans in the management of land use, access to the river and protection of cultural heritage*
94. We note that iwi/hapū management plans have been taken into account in the preparation of PC5. We agree with the HortNZ submission that the term strengthen in this context is not a common resource management term and somewhat ambiguous. Whilst we don’t agree that strengthen (to make more powerful) is part of enhance (to make better) the Panel thinks ‘enhance’ is less ambiguous.
95. We recommend deleting the term “strengthen” in Objective 40. This has a consequential implication for Policy KR 1B, that is, the term “strengthen” is also deleted.
96. As mentioned above Forest and Bird seek the addition of ‘health and’ wellbeing to the objective. We are cognisant of the fact that each objective is not intended to cover everything.
97. The primary objective of PC5 is to recognise and provide for the vision, objectives and desired outcomes of the Kaituna River Document. The Objective 44 wording is more closely aligned to Objective 6 in the Kaituna River Document than Forest & Bird’s preferred wording.
98. We have not recommended making the amendments sought by Forest and Bird.

Maketū or Maketu

99. Western Bay of Plenty District Council (**WBOPDC**) submitted that there was an inconsistent spelling of Maketu/Maketū throughout the proposed change.²⁰ “Maketū” appears some 8 or 9 times.

²⁰ Submission 4-01

100. We sought the advice of Dean Flavell, Chair of Te Maru o Kaituna during the hearing. We understand from his korero that the 'locals' use Maketu and language experts use Maketū.²¹
101. We also heard from Lucy Holden for BOPRC who provided evidence to support the use of Maketu. She noted that during the development of Te Tini a Tuna (Kaituna Action Plan), this matter was addressed and the macron was removed.²²
102. There were no views contesting this and as such the Panel recommends the use of "Maketu". We also accept the sec32AA analysis provided by Ms Holden.

Rivers and streams

103. WBOPDC sought the addition of 'and streams' to Method 23T.²³ This related to clarifying the cultural and public access to and along rivers 'and streams'. Te Tumu Landowners Group sought to retain the wording as notified and Taheke 8C opposed any changes on the grounds of access requiring landowner approval and the importance of public safety. The Council officer recommended no changes to the wording.²⁴
104. During the expert planning caucusing the use of "streams" was suggested by WBOPDC and agreed. We are aware that most lay people will refer to rivers and streams as discretely different bodies of water. The RMA includes streams in its definition of rivers and furthermore the definition of the Kaituna River co-governance area includes all rivers and streams flowing into the Kaituna River and Maketu Estuary.²⁵
105. We can see some merit in adding 'and streams' from a reader point of view, even though it will not provide definition clarity and significance. We support the joint witness statement recommendation and recommend that 'and streams' be added to Method 23T and other relevant sections 23T (c) and (f) as a consequence.

Method 23S

106. This method relates to structures that may impede cultural and recreational access in the Rangitāiki and is proposed to include the Kaituna River.

²¹ Dean Flavell, 11 October 2022

²² Reply evidence of Lucy Holden. 28 October 2022. para 55.

²³ WBOPRC submission 4-18.

²⁴ Overview Report. Para 6.317-6.320

²⁵ Overview Report. Para 6.355

107. Eastland opposed the inclusion of the reference to the Kaituna River due to a lack of structures in the river. Taheke 8C were concerned that the method could be promoted by recreation users to include logs and authorised structures.
108. The Council officer clarified that structures under the RMA do not include logs, that existing use rights of permitted and consented activities would fall outside this method. We also understand that any application of this method would be assessed on a case by case basis on man-made structures.²⁶ The Panel rejects the submission points and supports the staff recommendation to retain the method as notified.

Objective 43

109. Objective 43 sought the sustainable allocation and efficient use of water in the Kaituna for current and future generations.
110. Carrus Corporation (submission 3-5), AFFCO (submission 6-2), TTLG (submission 7-5), HortNZ (submission 8-5) and the Oil Companies (submission 10-2) supported retaining Objective 43.
111. The Panel were of the view that the objective as written had considerable overlap with Objective 42, and could be re-cast as a policy. Forest & Bird sought amendments to the quantity and allocation provisions to ensure that the priorities in the NPSFM were reflected. They were also of the view that Objective 43 would be better cast as a policy supporting Objective 42 or be amended significantly to apply within the limits of Objective 42. The Panel invited Mr Kay for Forest and Bird to suggest revised wording. This wording was considered and amended by the council officer, and included as Policy KR 4Ba together with explanatory text.
112. We are satisfied that the essence of the Objective 43 strengthening has been captured in the policy and explanation text. We have agreed with the text provided by the council officer and reasons provided.

Definition of Riparian Areas or Margins

113. In response to Expert Caucusing Regional Council staff recommended that the Panel be mindful of the narrow scope and purpose of PC5. Their report stated that the Panel should also recognise that NPSFM implementation is underway, and that process will consider wider matters relating to Māori relationships with waterbodies and the Te Mana o te Wai framework.
114. As signalled at the Hearing opening, the Report states that it may be that further amendments to PC5 provisions are required because of that process. The Report concluded that PC5 is the outcome of an iterative and collaborative process, that incorporates the views of a range of submitters with interests in the Kaituna Catchment and reflects the River Document and the

²⁶ Overview Report 6.310-6.316

RMA. It states that it has regard to the practical implications of the directions, and their efficiency and effectiveness.

115. At the expert planning conferencing 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.
116. We have also noted that the definition proposed by Forest and Bird is different to the current definition for riparian margin in this area under the Regional Natural Resources Plan.
117. The Hearing Panel rejects Forest & Bird's submission to amend the definition to add artificial watercourses and agrees with Mr Carlyon, Mr Barsdell, Ms Brennan, Mr Leighton and Ms Holden that the definition provided in PC5 should be deleted.

Addition of Te Tumu Urban Growth Area

118. Te Tumu landowners sought the addition of references to the Te Tumu Urban Growth Area (UGA) on maps throughout the proposed change.
119. The Hearing Panel rejects this submission, on the grounds that maps are intended to show rivers and streams and not UGAs. The Hearing Panel concludes that there is little value in adding them.

Section 32A and 32AA Evaluation Report

120. Clauses 49 and 50 give directions on the freshwater hearing panel giving recommendations on the provisions and matters raised in submissions, with reasons for accepting or rejecting submission points. Subclause 49(5) provides for consequential alterations that may be necessary arising from the submissions and any other relevant matter arising from them. Clause 50(c) requires that the freshwater panels recommendation report to include a further evaluation of the freshwater planning instrument in accordance with section 32AA.
121. Section 32 of the RMA prescribes requirements for preparing and publishing evaluation reports, including on an 'amending proposal' that would amend a plan or change.
122. In particular, as applicable to the change in question, section 32 directs that an evaluation report is to examine whether the provisions are the most appropriate ways to achieve the relevant objectives by identifying other reasonably practicable options for doing so, assessing the efficiency and effectiveness of the provisions, and summarising the reasons for

deciding on the provisions. The report is to contain a level of detail that corresponds to the scale and significance of the environmental, economic, social and cultural effects that are anticipated from the implementation of the proposals.

123. In assessing the efficiency and effectiveness of provisions, the assessment has to identify and assess the anticipated benefits and costs of the environmental, economic, social, and cultural effects that are anticipated from the implementation of the provisions, including the opportunities for economic growth and employment anticipated to be provided or reduced; the assessment has also, if practicable, to quantify the benefits and costs; and if there is uncertainty or insufficient information about the subject-matter of the provisions, has to assess the risk of acting or not acting.
124. In considering the amendments to the change requested in the submissions, and in formulating our recommendations on them (whether they are addressed in the main body of this report or in Appendix 2 to it) we have, to the extent practicable, examined and assessed the criteria itemised in section 32 as applicable. In doing so, we have:
 - a. considered the extent to which the changes are the most appropriate way to achieve the purpose of the Act;
 - b. identified and assessed the benefits and costs of the environmental, economic, social, and cultural effects that are anticipated from implementation of the provisions, including economic growth and employment, quantifying the benefits and costs where practicable, and where there is uncertain or insufficient information, assessing risks of acting or not acting;
 - c. had regard to the Council's duty to have the proposed changes give effect to relevant national policy statements (including the NPSFM 2020), and to be consistent with or have regard to other prescribed instruments as identified in paragraph 22 of this report; and
 - d. had regard to the Council's duty to have the proposed changes comply with directions in national environmental standards, and to only impose a level of restriction greater than that imposed by a national environmental standard where there is justification for doing so.

Reasonably practicable options

125. In examining whether amendments to the RPS are the most appropriate ways to achieve the objectives of the RPS, we have sought to identify other reasonable and practicable options. In doing that we have confined our consideration to options presented in submissions or in the s42A Report, and to combinations or refinements of them. We have refrained from inventing options of our own, as that could result in unfairness to submitters.

Recommendations

Based on the Panel's consideration of all the material before it, including the Overview report, submissions, further submissions, evidence presented at the hearings and following consideration of the requirements of section 32AA and other relevant statutory matters, and for the reasons set out in this recommendation report:

- PC5 is accepted as notified, and as further amended prior to, during and subsequent to the hearings, as set out in Appendix 1.
- All submissions on PC5 be accepted, accepted in part or rejected to the extent that they correspond with that conclusion and the matters the Panel has set out in the preceding report sections (and as summarised in Appendix 2).
- Pursuant to clause 49 of the First Schedule of the Resource Management Act 1991, the Panel gives notice of its recommendation on submissions to PC5.

DATED THIS 14th DAY OF MARCH 2023.



Antoine Coffin (Chair)



Andrew von Dadelszen



Rawiri Faulkner

Appendix 1 – Amended track change version of Proposed Change 5
(Kaituna River)

Appendix 2 – Summary of decisions on submissions