

**BEFORE THE WAIKATO DISTRICT PLAN INDEPENDENT HEARING
COMMISSIONERS**

IN THE MATTER of the Resource
Management Act 1991

AND

IN THE MATTER of hearings in relation to
submissions and further
submissions by **MERCURY
NZ LIMITED** on Hearing 2
Plan Structure and All of
Plan of the **PROPOSED
WAIKATO DISTRICT PLAN**

**STATEMENT OF EVIDENCE OF STEPHEN COLSON
FOR MERCURY NZ LIMITED**

1. INTRODUCTION

- 1.1 My name is Stephen Colson. I hold the position of Manager Planning & Policy at Mercury NZ Limited ('Mercury' or 'the Company'). I have been with the Company for fifteen years and I am responsible for resource management planning and policy matters for Mercury. In this role, I have been involved in a wide range of freshwater management and policy issues at a national and regional level.
- 1.2 I have over thirty-eight years' experience in the field of resource management, gained in both local government, central government and the private sector. I am very familiar with the Waikato District, having been its District Planning and Policy Manager from 1990 to 1996.
- 1.3 I hold the qualifications of Bachelor of Town Planning from Auckland University and PG Diploma in Business Administration from Massey University and have been a full member of the New Zealand Planning Institute since 1984. I am an associate of the Arbitrators and Mediators Institute and member of the Resource Management Law Association.

1.4 I am authorised to present this evidence on behalf of Mercury, in support of its primary submission and further submissions on the Proposed Waikato District Plan (the 'PWDP'). Mercury's primary submission points have been allocated to Hearing 2: Plan Structure and All of Plan.

1.5 My evidence addresses the following:

- An overview of Mercury;
- Outline of the Waikato Hydro Scheme;
- Overview of high flow management and flooding;
- History of consultation on natural hazard District Plan outcomes;
- Summary of Mercury submissions on Stage 1 of the PWDP;
- Natural hazards and the Waikato Regional Policy Statement; and
- Outline of Mercury's position on Stages 1 and 2 of the PWDP.

2. EXECUTIVE SUMMARY

2.1 Mercury has significant concerns regarding the PWDP's approach to flood hazard management, and in particular, the approach the Waikato District Council ('Council') has taken to processing Stage 1 ahead of Stage 2. In Mercury's view, the Council has 'put the cart before the horse', and is potentially failing to manage significant risks from natural hazards, as it is required to manage as a matter of national importance in the Resource Management Act 1991 ('RMA'). This concern remains, as some important decisions may be made through Stage 1, for example defining urban growth areas, the location of infrastructure and designing land use controls, - all before flooding risks (as contained in the Waikato Regional Council ('WRC') flood modelling outputs) are properly understood.

2.2 Mercury has an interest in flood risk issues because of its role in assisting the WRC when the WRC is operating as the Statutory Flood Manager. As I discuss in my evidence, Mercury's operation of the Waikato Hydro Scheme can provide some (but not complete) attenuation of flooding. It is this role which is driving Mercury's concern at the absence of a robust approach to flood risk in Stage 1 of the PWDP.

2.3 Mercury (and its predecessor Mighty River Power) has engaged with the Council since 2004 and endeavoured to work constructively with the Council to incorporate natural hazard provisions into its District Plan to address flood risk in the Waikato River Catchment and integrate this risk into the planning framework.

- 2.4 Responsibility for addressing natural hazards sits with both the Council and WRC, through their respective functions under section 30 and section 31 of the RMA. It is a function of district councils to “...control of any actual or potential effects of the use, development or protection of land, including for the purpose of the avoidance or mitigation of natural hazards”.
- 2.5 I understand that WRC has made available the information that the Council requires to undertake its functions, as well as setting out a clear framework for managing natural hazards in the Waikato Regional Policy Statement (‘RPS’).
- 2.6 WRC also has a role as the Statutory Flood Manager and operator of the Lower Waikato Flood Protection Scheme. Mercury cooperates closely with WRC in this role during a flood event, because the Waikato Hydro Scheme serves a flood attenuation function (though it cannot attenuate all flooding, as I noted earlier).
- 2.7 Understanding flood risk is a necessary precursor to making strategic decisions about appropriate land use in areas of potential flood risk and how that risk can be avoided, remedied or mitigated through appropriate development controls.
- 2.8 Despite assurances from the Council, it has unfortunately failed to introduce the promised natural hazard provisions when the PWDP was notified. The absence of these provisions, which will form Stage 2 of the PWDP process, makes it very difficult for Mercury to sensibly and effectively engage in this Stage 1 hearing process.
- 2.9 The Council has elected to stage the hearing process in a way that allows Stage 2 to (eventually) catch up, so that natural hazard matters can be heard in sequenced fashion.
- 2.10 I consider it is critical that once the Stage 2 notified natural hazard and climate change provisions are available, the Council, in conjunction with WRC, should reconcile the Stage 1 land use zone provisions and Stage 2 natural hazard provisions on a Waikato Catchment-wide scale. The extent of potential conflicts should then be depicted on a spatial overlay and brought to the attention of Mercury, land owners and Stage 1 submitters, and the Hearing Commissioners as soon as possible. This additional step would assist in ensuring that Stages 1 and 2 are progressed through the hearings in an integrated manner, removing natural justice issues for affected submitters, and properly addressing flooding risk, as required by the RMA.

3. OVERVIEW OF MERCURY

- 3.1 Mercury is one of New Zealand’s largest electricity generators and retailers, providing energy services to homes, businesses and industrial consumers throughout the country. We have a long heritage in renewable energy in

New Zealand, serving about 1-in-5 homes and businesses. Our goal is to be the leading energy brand in New Zealand, inspiring our customers, owners and partners by delivering value, innovation and outstanding experiences.

- 3.2 Mercury has a diverse and expanding portfolio of generation assets throughout the North Island, which over the last five years has generated an average of over 7,100¹ gigawatt hours of electricity per year. 100% of the Company's generation comes from renewable resources, which includes the Waikato Hydro Scheme ('the Scheme') on the Waikato River and geothermal power stations in the Waikato and Bay of Plenty regions.
- 3.3 On the Waikato River, Mercury harnesses the power of water by gravity through nine hydro power stations, which have a total net capacity of approximately 1,058 MW. Together, these hydro power stations produce about 10% of New Zealand's electricity. Hydro generation can be increased or decreased quickly to meet peak demand for electricity in the upper North Island.

4. THE WAIKATO HYDRO SCHEME

- 4.1 The Waikato Hydro Scheme consists of the Taupo Gates, eight dams and nine hydro power stations on the Waikato River, as shown in Figures 1 and 2 below.

¹ Average 5 year electricity generation 7,109 (GWh) derived from page 60, Mercury Annual Report 2019. Annual electricity generation output (GWh) from Mercury assets 2015 to 2019 was 6,563 (in 2015), 6,842 (in 2016), 7,533 (in 2017), 7,704 (in 2018), 6,902 (in 2019).

Figure 1: Hydro Generation Assets

Nominal capacity is shown in Megawatts and the commissioning date

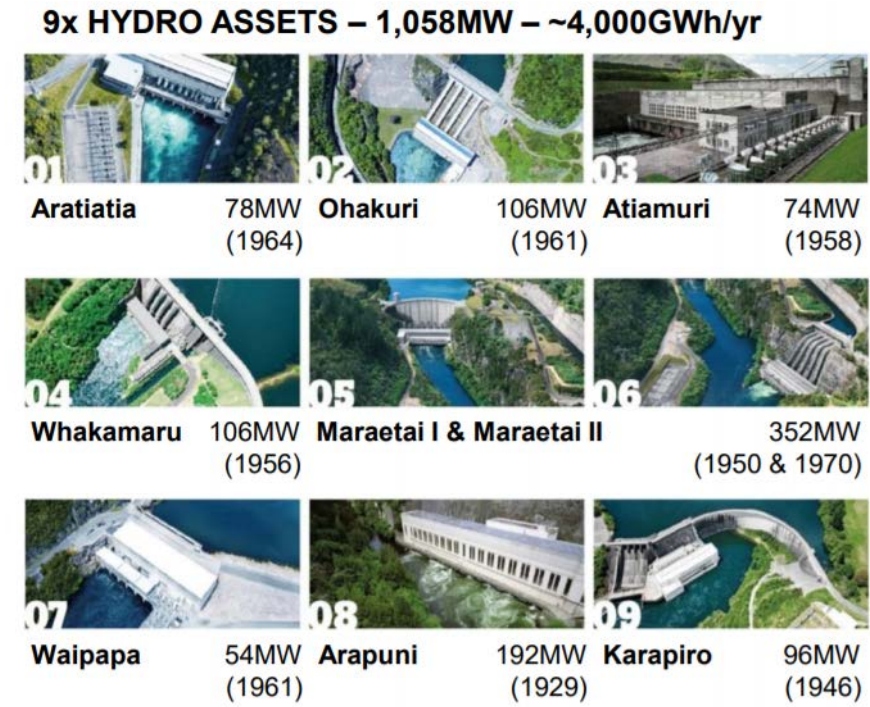
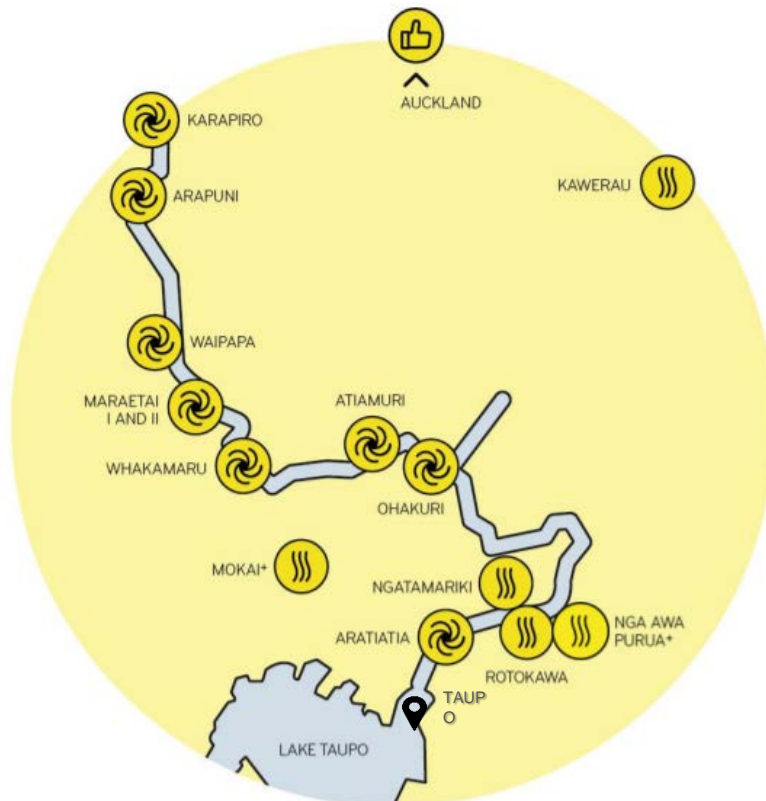


Figure 2: Location of Mercury’s Generation Assets (Hydro & Geothermal)



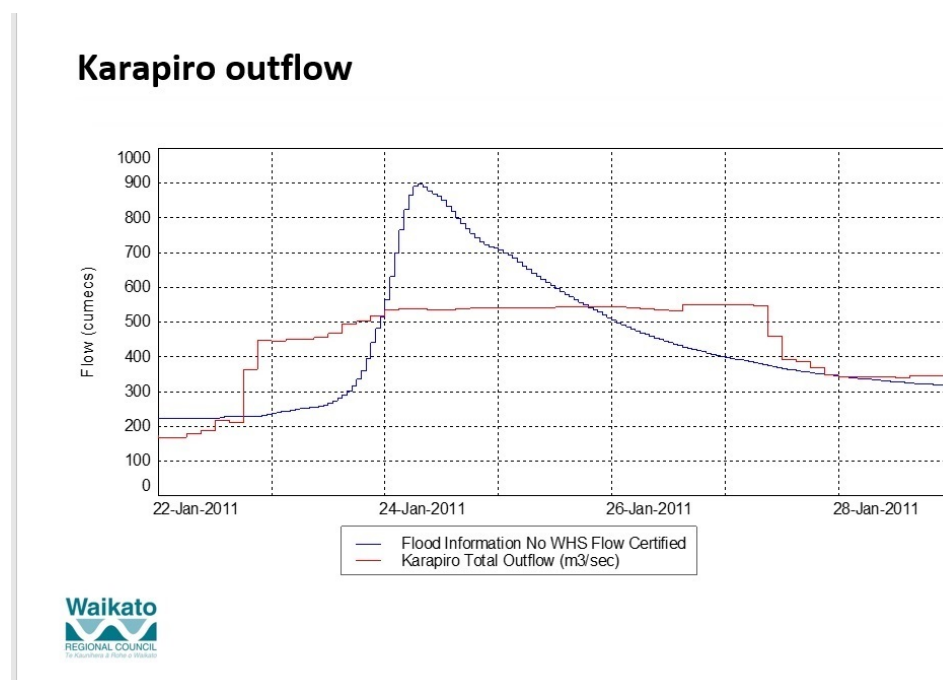
- 4.2 The Scheme was developed in stages from the 1920's to 1971. The Scheme is now an important part of the Waikato River catchment environment, with the majority of the generation assets being in continual operation for over 50 years.
- 4.3 The operation and maintenance of the Scheme is authorised by resource consents granted by WRC in April 2006, which include conditions requiring the preparation of the High Flow Management Plan ('HFMP'), which I explain in the next section of my evidence.
- 4.4 Storage in Lake Taupo is highly influenced by inflows and 20% of those inflows are derived from the Tongariro Power Scheme ('TPS'), which is operated by Genesis Energy. It is important to note that in a high flow event, volume from the TPS is diverted back to the Whanganui, Rangitikei and Whangaehu catchments. Lake Taupo storage is limited to a range of 1.4m. Annual rainfall and snowmelt typically exceed this storage capacity, resulting in water cycling through the lake 5-7 times a year. Lake Taupo storage capacity largely dictates how much water flows down the Waikato River. Together with flows from tributaries downstream of the Lake Taupo outflow, the catchment hydrology means the Waikato Hydro Scheme is essentially a 'run of river' system, using water released from Lake Taupo flowing down to the Karapiro Dam. There is limited storage capacity in the Waikato River hydro reservoirs below Taupo Gates, which provide enough storage for two days generation.

5. HIGH FLOW MANAGEMENT

- 5.1 The Scheme's resource consent conditions include requirements for a high flow operating regime. Such 'high flow conditions' are triggered when:
- The Lake Taupo level exceeds 357.25 masl (Maximum Control Level); or
 - The Waikato River flow is greater than 1,000 m³/s at Ngaruawahia and the confluence with the Waipa River; or
 - Catchment and/or river inflows cause or seem likely to cause any of the hydro reservoirs or Lake Taupo to rise above maximum control levels, as described in the resource consents.
- 5.2 Mercury's HFMP then sets out how it will operate the Scheme during high flow conditions. It describes how Lake Taupo and the hydro reservoirs will be managed during a high flow event until normal flows are re-established within the Scheme, and how the Scheme will be operated (in order of priority) to:

- Meet dam safety requirements to ensure the integrity of the dam structures is not compromised;
 - Minimise, to the extent possible, the adverse effects of a flood event that may arise from the exercise and operation of the Scheme or any other cause, including effects on Lake Taupo, the hydro reservoirs and the Waikato River downstream of Karapiro; and
 - Assist the WRC in its role as Statutory Flood Manager.
- 5.3 During a high flow event, it is the responsibility of WRC, acting as Flood Manager, to manage the flood event in a holistic manner that benefits the Waikato River Catchment as a whole. WRC works closely with Mercury during high flow events to manage the release of water through the Scheme, to moderate the potential effects of flooding on the Taupo and lower Waikato communities.
- 5.4 Mercury and WRC work together to reduce the risk of the coincidence of flood peaks for the Waikato River (which has managed flows from Karapiro) and Waipa River (which has uncontrolled natural flows). Coincidence of Waikato River and Waipa River flood peaks would increase flood levels in the lower Waikato River. Hydro system inflow can be stored and released earlier or later during the event to reduce the likelihood of the Waikato and Waipa River peaks coinciding. Mercury receives a 14 day weather forecast, which allows drawdown of Lake Taupo and the hydro system to be initiated if forecast rainfall figures indicate a significant flood event is likely to occur.
- 5.5 Maximum consented flow under flood/high flow conditions at the Karapiro dam (the lowest hydro dam in the Scheme) is 600m³/s. The storage in the Scheme allows the outflow from Karapiro to be less than the peak hydro system tributary inflow and the outflow can be released over a longer duration. **Figure 3** (2011 flood event) below shows that the volume of flow released between natural and managed flow scenarios is the same, except peak hydro system inflows in the managed scenario are stored and the outflow from Karapiro is therefore lower, but occurs over a longer duration. This reduces the flood peak flow downstream, which is relevant to the Waikato District downstream of Karapiro and Hamilton.

Figure 3 Karapiro Hydrograph 2011 Flood Event²



5.6 The Scheme was obviously never designed for flood management purposes, but it is able to provide some attenuation of flood inflows. There are of course intricacies to the implementation of the HFMP. If of further interest to the Commissioners, Mercury can make its Hydrologist available to answer questions at the Hearing.

6. HISTORY OF CONSULTATION ON DISTRICT PLAN NATURAL HAZARD OUTCOMES

6.1 For the last 15 years, Mercury (and its predecessor Mighty River Power) has been working with the Council to ensure that the District Plan land use provisions provide for the management of sensitive land uses, and manage land use intensification, in a manner that is cognisant of risks from natural hazards and climate change. Mercury supports robust planning processes, based upon accurate flood risk modelling information. It considers that the Council should be taking primary responsibility for this matter in its District Plan review.

6.2 Mercury has corresponded with Council since 2004 when Mercury (previously Mighty River Power) submitted on the matter at the time of the last District Plan review, and lodged an appeal on the subject in 2007. The appeal was settled in 2010 following a resolution passed by Council that it would notify a district-wide plan change relating to flood hazards by late 2011. That plan change never

² Source: Overview of High Flow Management – A joint presentation by Waikato Regional Council and Mercury, 27th October 2017.

eventuated. **Annexure A** to my evidence is a letter I wrote to the Council on 13 March 2015, which outlined the basis upon which Mighty River Power agreed to the deferring of a flood hazard plan change. Attachment 1 to that letter records the long history of dealings with the Council on this issue.

6.3 From the time of consultation on the PWDP, Mercury has continued to meet and correspond with Council officers to address the company's procedural concerns with the PWDP process. **Annexure B** to my evidence contains a letter I wrote to the Council on 27 June 2018, which outlines Mercury's concerns. Mercury has for some time advocated to officers that Stage 1 of the process should be put on hold until at least the further submissions process for Stage 2 of the PWDP.

7. **MERCURY SUBMISSIONS ON STAGE 1 OF THE PWDP**

7.1 The relief sought in Mercury's primary submission is that the Council should either:

- Withdraw PWDP Stage 1 (and renotify both Stage 1 and Stage 2, together, once the required work on natural hazards planning has been undertaken and consulted on), or
- If the PWDP Stage 1 is not withdrawn, then the Council must revisit all the urban growth and land use intensification provisions to manage flood hazard risk (Objectives, Policies, Methods and Rules) at Stage 2, and a single hearing should be held to hear submissions for both Stage 1 and Stage 2.

7.2 I understand that given the breadth of this submission, Mercury has sufficient scope to engage on land use provisions within Stage 1 of the PWDP process, if required.

7.3 Mercury lodged further submissions on over 4,000 submission points. Given that almost all land use zones may be relevant to areas potentially affected by flooding, or residual flooding risk (including areas located behind stop banks), Mercury considered that lodging wide-reaching further submissions was the right approach to forewarn parties of this issue, should the need for Mercury to intervene in zoning hearings later arise.

7.4 Mercury's submissions seek a framework within the PWDP that accords with the purpose and principles of the RMA and enables appropriate land use and development which is cognisant of natural hazards.

7.5 As outlined in Mercury's submissions, the two-stage process for the PWDP is of significant concern. This concern remains, as some important decisions may be made through Stage 1, for example defining urban growth areas, the location of infrastructure and designing land use controls - all before flooding risks (as

contained in the WRC flood modelling outputs which are now available) are properly understood.

- 7.6 In my view, the Council has 'put the cart before the horse', and is potentially failing to manage significant risks from natural hazards. There is also potential for conflict between yet to be notified flood hazard provisions and the notified land use zones.
- 7.7 Mercury considers it is necessary to analyse the results of a proper flood assessment that shows the areas affected by a 1:100 event, prior to designing the policy framework to respond to that risk. Mercury understands that the WRC has appropriate flooding information available for the Council to use. The issue now is despite the relevant information being available, the Council has yet to develop its response (or if it has, to share that response more widely). The policy framework response will need to include planning and management controls that avoid, remedy and mitigate significant flood risk in an appropriate manner, to ensure there is a tolerable level of risk exposure for all land use and development. Plainly there will need to be decisions made around what is a tolerable level of risk, and there may be different views on that, but that debate needs to occur at the right time, and in the right context.
- 7.8 Mercury will also be peer reviewing WRC's flood assessment information, including particularly any assumptions that may have been made around the operation of the Scheme.
- 7.9 Mercury wishes to find a pragmatic solution to address the jurisdictional issues that might arise as a result of the Council proceeding with this staged approach.
- 7.10 For the above reasons, I am of the opinion that progressing the hearings process for Stage 1 provisions that are or may be affected by Stage 2 will not be an efficient process without further work to spatially reconcile those Stage 1 provisions and submissions impacted by Stage 2, despite the comments made by the reporting planning officer Mr Eccles in the Hearing 2 Section 42A Report.
- 7.11 Furthermore, the burden of cost on all submitters, including Mercury, is unreasonable, given that Mercury's primary goal is to ensure the Council follows a robust planning process in light of the potential for significant effects on the health and well-being of people and communities from natural hazards.

8. NATURAL HAZARDS AND THE RPS

8.1 The requirement to undertake flood hazard identification and management of risk stems from the RMA and RPS.

8.2 The RPS, which the PWDP must give effect to, includes a number of issues, objectives, policies and methods relevant to the management of natural hazards (including Objective 3.24, Policies 13.1, 13.2, 13.3). This framework includes general policy requirements that:

- Require risks from natural hazards to be mitigated to a tolerable level for all development, while avoiding intolerable risk.
- Require reduction in the vulnerability of communities, while increasing resilience. This includes minimising any increase in vulnerability due to **residual risk**.³
- Recognise natural systems and take a ‘whole of system’ approach.
- Avoid the need or demand for new structural protection works, and a preference for natural defences over man-made structures.

8.3 It is also clear within the Methods in the RPS (Section 13) that both the Council and WRC have statutory responsibilities for identification and management of flood hazards. It is Mercury’s role to support WRC, as Statutory Flood Manager, to regulate the level of Lake Taupo and reservoirs in the Scheme in order to moderate the effects of high inflows and flooding in Lake Taupo and the Waikato River Catchment below. It is this role that is driving Mercury’s concern that the Council and WRC take a robust approach to managing land use and future growth in areas where unacceptable flood risk is identified.

9. MERCURY’S POSITION ON THE FUTURE PWDP PROCESS

9.1 It is clear that the RMA requires the Council to develop a policy framework that avoids significant flood hazard risk and/or devises mitigation measures to alleviate potential risks to a tolerable level. It is Mercury’s expectation that through the PWDP hearings, the Commissioners will carefully consider all RMA and RPS requirements relevant to integrated land use management and mitigation of natural hazard risk within the District.

9.2 Because we are still yet to review all relevant natural hazard and climate change provisions, I am of the opinion that Mercury is unable to contribute constructively to the wider Phase 1 District Plan policy process.

³ Residual risk is defined in the RPS as “*the risk associated with existing natural hazard structural defences such as stopbanks and seawalls, including the risk of failure of a defence or of a greater than design event occurring.*”

- 9.3 In the absence of the Stage 2 provisions, Mercury's current position is that it neither has the solution, nor can it speculate on the scale of the potential conflict between land use, land use intensification and flood affected areas. I consider that Mercury should not be burdened with the obligation of looking at district wide reconciliation of potential conflicts between existing land use re-zonings, proposed growth areas and imminent natural hazard maps and provisions ahead of time. Mercury is also not keen to single out individual land owners in this process, which would be time consuming, unfair and speculative.
- 9.4 I consider it is critical that once flood modelling and the Stage 2 notified natural hazard and climate change provisions are available, the Council, in conjunction with WRC, should reconcile the Stage 1 land use zone provisions and Stage 2 natural hazard provisions on a Waikato Catchment-wide scale. The extent of potential conflicts should then be depicted on a spatial overlay and brought to the attention of Mercury, land owners and Stage 1 submitters, and the Hearing Commissioners as soon as possible.
- 9.5 I consider the impact of the Stage 2 provisions on those Stage 1 provisions needs to be understood and brought to the submitters' attention, so that during their Stage 1 hearings, they can then speak to the Stage 1 provisions, after reviewing notified Stage 2 natural hazard and climate change provisions. This approach would achieve the following outcomes, which Mercury has previously communicated to the Council:
- Avoid unnecessary inefficiencies, and costs, which every affected submitter will be burdened with, if matters require revisiting, and
 - Remove natural justice issues arising from submitters not being aware of any changes to land use provisions that may be required as a result of flooding risk.
- 9.6 I note that Mercury has, albeit reservedly, agreed to the separate process for Ohinewai submissions to be heard and determined ahead of the rest of the PWDP.
- 9.7 However, the extent to which the Stage 2 provisions may impact upon the rest of the PWDP and the Stage 1 submissions will not be clear until the Stage 2 Natural Hazards and Climate Change objectives, policies and rules have progressed in an integrated manner alongside the Stage 1 process.

Stephen Colson

23 September 2019

ANNEXURE A – 13 MARCH 2015 LETTER

13 March 2015

File No: W02-03-01

Jenni Vernon
Waikato District Council
Private Bag 544
Ngaruawahia 3742

Dear Jenni

Waikato River Flood Hazard Mapping and Plan Change

Further to our recent discussions and my subsequent email to you we have considered the Council's request to defer development of a flood hazard plan change so that it can be incorporated into the full District Plan review with a notification target in the first quarter of 2017.

My email of 28 January 2015 summarised the points of discussion and the changes in circumstances that have led to Council's request. In short, the changes in circumstances are:

- i. The recent review of the Waikato RPS (including final consent order on the natural hazards topic) with a confirmed regional development strategy.
- ii. Waikato District Plan Change 2: District Wide Growth and Rural and Coastal Subdivision (operative February 2014).
- iii. Development of structure plans for most settlements in the District.
- iv. The availability of flood data can be referenced in LIMs and PIMs, noting that flood data is currently available for the Waikato and Waipa Rivers down as far as Huntly, with flood data on the remainder of the Waikato River likely to be available by mid-2015.

Mighty River Power acknowledges that the steps that have been taken toward a more managed approach to urban and rural residential development in the District have assisted in lowering the occurrence of flood hazard risk.

There is considerable history to the delay in flood hazard identification for the District and the inclusion of natural hazard provisions in the District Plan. This history is relevant to Mighty River Power's consideration of the Council's request for deferment and is summarised in **Attachment 1** to this letter.

The history in Attachment 1 demonstrates there have been significant delays and false starts with respect to the flood hazard mapping and associated plan change. Mighty River Power has previously written to the Council expressing its concerns that the delays were unacceptable. Mighty River Power remains disappointed with the delays but is also mindful of the elements of the District development strategy that have now been put in place and accepts there is a case for deferment to enable a more integrated approach to be taken in the District Plan review and a more managed consultation process.

However, if the District Plan review is notified in 2017 it is likely to be at least 2019 before the rules have "legal effect" following the release of decisions on submissions by the Council. There are specified exceptions in section 86B(3) of the RMA where rules have immediate legal effect, but these exceptions do not apply to natural hazard rules. As a result it will be a further 4 years from now and some 15 years after Mighty River Power first raised the flood hazard issue in its 2004 submission.

Section 86D of the RMA enables a council to apply for an order from the Environment Court that specific rules have immediate legal effect following notification of a plan or plan change. This section of the RMA helps to minimise delays in the implementation of rules and a potential "gold rush" of applications for development trying to avoid the rules. Mighty River Power requested the Council in July 2010 to apply for an order from the Court and while the concept was not opposed by Council staff, staff were concerned that quite a body of work was necessary to make application to the Court, which could delay notification of the plan change. As a result the application for an order from the Court did not form part of the 2010 Council resolution.

Mighty River Power believes that if it agrees to the deferment sought by Council, then Council will have sufficient opportunity to prepare an application to the Court for the flood hazard rules to have immediate legal effect on the date the Proposed Plan is notified. I note that Tasman District Council made such an application to the Court in 2011 in respect of its coastal hazards rules for similar circumstances and the Court agreed to the orders. I have attached for your information a brief summary of this judgement (*Re Tasman DC [2011] NZEnvC 47*) in **Attachment 2** to this letter.

In conclusion, Mighty River Power agrees to the deferment of the flood hazard plan change so that it can be incorporated into the full District Plan review, and the subsequent rescinding of the 2010 Council resolution, subject to the Council passing new resolutions to the following effect:

1. The incorporation of flood hazard mapping for the Waikato River, and associated rules and other provisions, into the District Plan review, with a notification target no later than 1 April 2017.
2. A commitment by the Council to make application under section 86D of the RMA for an order from the Environment Court that any rules relating to flood hazard areas along the Waikato River to have legal effect on the date that the Proposed District Plan is publicly notified.
3. The Environment Court is advised of this resolution providing support for the progress it has made in giving effect to the Memorandum of Consent (see paragraph 14(a)) that was filed with the Environment Court in support of the Draft Consent Order to settle Mighty River Power's appeal.

Your cooperation in this matter is appreciated. Please contact Miles Rowe (07 857 0342, miles.rowe@mightyriver.co.nz) if you have any further queries regarding the details in this letter.

Yours sincerely



Stephen Colson
Manager Planning & Policy

ATTACHMENT 1

Timeline of the history to the delay in flood hazard identification for the District and the inclusion of natural hazard provisions in the District Plan.

- February 2004 – Mighty River Power submissions on the Proposed District Plan.
- November 2006 – Council decisions on submissions.
- January 2007 – Appeal by Mighty River Power on decisions seeking comprehensive flood hazard mapping and associated rules in the Proposed District Plan.
- 2007 to 2010 - Various rounds of negotiation/mediation on the appeal. During negotiation/mediation on the appeal it was accepted by the parties that a future district-wide plan change or variation was necessary to address the range of issues associated with flood hazard management.
- March 2010 – The Council put forward the proposition of notifying a combined District Plan, integrating a flood hazard variation, within two years of the amalgamation of part of Franklin District with Waikato District.
- June 2010 – Council put on hold the proposition to amalgamate the Franklin District Plan into a single Plan for the Waikato District. It remained uncertain as to when flood hazard mapping would be incorporated into either the Waikato or Franklin District Plans.
- September 2010 – Council passed a resolution to undertake a district wide variation to the Proposed District Plan in relation to flood hazards to fully resolve the appeal by Mighty River Power, with notification of the variation (or plan change) no later than December 2011, subject to the results of flood hazard mapping being available from Waikato Regional Council by June 2011.
- December 2010 – Consent order signed by the Court to resolve Mighty River Power's appeal.
- June 2013 – Results of flood hazard mapping by Waikato Regional Council for the Waikato and Waipa Rivers down as far as Huntly completed following significant delays. The section of Waikato River from Huntly to the River mouth remained outstanding; no timeframe for completion by Waikato Regional Council.
- June 2013 – Council indicate they will commence development of a (stage 1) flood hazard plan change for the section of river down as far as Huntly. No timeline available for a stage 2 flood hazard plan change covering the remainder of the Waikato River.
- September 2014 – Council had engaged AECOM to assist with development of the flood hazard plan change (Plan Change 7). Plan Change 7 is to be progressed outside of the Waikato – Franklin District Plan review; tentative timeframe is pre-consultation in late 2014, with notification in mid-2015. Flood hazard mapping for the section of river below Huntly was likely to be rolled into the Waikato – Franklin District Plan review to be rolled out in 2017.
- January 2015 – Council seeks Mighty River Power's agreement or otherwise to a deferment to Plan Change 7 so that it can be incorporated into the full District Plan. Council propose a draft District Plan in 2016 and notify in the first quarter of 2017.

ATTACHMENT 2

Environment Court, Wellington

Re Tasman District Council

[2011] NZEnvC 47
ENV-2011-WLG-17

28 February 2011

District plan — Rule — Time limit

Tasman DC (“the council”) applied under s 86D of the RMA for an order that amendments to rules (“the rules”) to be introduced by Plan Change 22 (“PC22”) to the Tasman Resource Management Plan (“the plan”) should have legal effect from the date that PC22 was publicly notified. The rules concerned Coastal Hazard areas, and restricted subdivision and construction of dwellings on the coastal plain of Mapua/Ruby Bay. The council argued that the areas were likely to be affected by erosion and flooding so it was necessary to restrict development, and that if the order were not granted there would likely be a rush of applications for construction and subdivision once PC22 was notified by property owners trying to avoid the rules.

The Court stated that, notwithstanding the apparent likelihood that notification of changes to plan rules would generate a rush of applications for resource consent under the existing less restrictive rules, Parliament had passed ss 86A -86D of the RMA which provided that, subject to limited exceptions, rules in a proposed plan would not have legal effect until affected parties had the opportunity to make submissions. The Court concluded that the mere possibility that applications would be made under existing rules would of itself not necessarily be determinative of an application under s 86D. Such an application required a wider consideration of the purpose of the changes, their significance, the possible consequences of a rush of applications and the provisions of s 5 of the RMA. In the present case, to allow the rules to have legal effect from the date of notification of PC22 would potentially impact upon the rights of landowners in the low-lying areas affected, and the rules represented a substantial change to the status quo regarding building construction and subdivision.

However, the factors in favour of making the order were that: protection of people and land from coastal erosion and flooding required consideration of the s 5 issues of peoples' and communities' social, economic and cultural wellbeing and their health and safety; allowing the rules to take immediate effect represented a precautionary approach which was appropriate given the potential effects of erosion and flooding, and was consistent with Policies 3(2)(a), 7, 24 and 25 of the NZ Coastal Policy Statement; s 7(i) of the RMA required the Court to have particular regard to the effects of climate change, which was a factor driving coastal erosion and flooding; and PC22 was the culmination of a comprehensive planning process. Having taken these factors into account, the Court concluded it was consistent with the principle of sustainable management to grant the application and made orders accordingly.

ANNEXURE B - 27 JUNE 2018 LETTER

27 June 2018

Dear

Mercury's Concerns with Phase 1 of District Plan Review Excluding Flood Hazard Provisions

Mercury recently learnt that the Waikato District Plan review will be developed and notified in two phases, with most of the District Plan being progressed through phase 1 to be notified mid-2018, and climate change and natural hazards provisions being developed through phase 2 to be notified in early 2019. Further we understand that the two phases will be brought together in a single hearing process in 2019. Waikato District is experiencing rapid growth and the two-phase District Plan review process is of significant concern to Mercury as some important decisions will be made through phase 1, including urban growth cells, the vulnerability of infrastructure and land use controls, that will precede the development of planning provisions relating to natural hazard management through phase 2. In our view, this is 'putting the cart before the horse' especially as the management of significant risks from natural hazards is a matter of national importance in the RMA that must be taken into account in all resource management decision making. Failure to address the natural hazard provisions in phase 1 is considered negligent of Council as it potentially exposes the community to an unacceptable level of risks from natural hazards.

Mercury is primarily interested in how flood hazard management is to be undertaken in the Waikato River catchment north of Hamilton. Natural hazard management is a joint responsibility with Waikato Regional Council but Mercury considers that Waikato District Council should be taking primary responsibility for this matter in its District Plan review. It is essential that effect be given to the Waikato Regional Policy Statement relating to the identification and assessment of hazard zones and natural hazard risks. Mercury has previously corresponded with Council regarding the history for this matter dating back to 2004 when Mercury (previously Mighty River Power) submitted on the matter for the last District Plan review and lodged an appeal on the subject in 2007. The appeal was settled in 2010 on the premise of a resolution passed by Council to notify a district-wide plan change relating to flood hazards by late 2011, which never eventuated. It became apparent to Mercury in May 2017 at a meeting with Waikato District Council and Waikato Regional Council that there was a general lack of communication and coordination between the two Councils to progress the flood hazard work, including a lack of coordination over funding and the sharing of costs. We understand that flood hazard modelling to date has focused on the area around the Huntly and is to be followed up with the section of river between Horotiu and Ohinewai. This still leaves a considerable section of the Lower Waikato River that is not being investigated for flood hazard management purposes.

Mercury negotiated in good faith with Waikato District Council on its appeal in 2007 on the premise of progress being made towards a plan change to address flood hazards. Mercury has been extremely patient with the Council but is deeply disappointed that we appear no further ahead than we were in 2004 when the last District Plan was notified. Mercury requests a meeting with Council to discuss this important matter. My contact details are provided in the footer of this letter.

Yours sincerely



Copy to: Tracey May, Waikato Regional Council