

BEFORE THE WAIKATO DISTRICT COUNCIL HEARING COMMISSIONERS

PROPOSED WAIKATO DISTRICT PLAN

UNDER Resource Management Act 1991

IN THE MATTER Outstanding Natural Features and Landscapes, Heritage and Cultural Landscapes.

Submitter **WAIKATO - TAINUI**

STATEMENT OF EVIDENCE OF GAVIN RHYS DONALD

ON BEHALF OF WAIKATO-TAINUI

LANDSCAPES CHAPTER HEARING

21 AUGUST 2020



Te Whakakitenga o Waikato Incorporated
PO Box 648
HAMILTON

1.0 Introduction

- 1.1 My name is Gavin Rhys Donald and I hold the position of Managing Director at GMD Consultants Limited. I have over 15 years' experience in the field of resource management and environmental planning. This experience has been gained in both council and consultancy settings, in both New Zealand and the United Kingdom.
- 1.2 Having represented Waikato-Tainui on different issues for nearly 10 years, I have significant experience with Waikato River legislation and in particular the Vision and Strategy for the Waikato River. This experience has been gained through assisting regional and district councils address the Vision and Strategy for the Waikato River through policy development and the review of resource consent applications.
- 1.3 I hold a Bachelor of Planning degree from the University of Auckland. I am also a full member of the New Zealand Planning Institute.

2.0 Expert Witness Code of Conduct

- 2.1 I can confirm I am familiar with the Code of Conduct for Expert Witnesses as set out in the Environment Court Practice Note 2006 (and including the amendment). I have read and agree to comply with the Code. Except where I state that I am relying upon the specified evidence or advice of another person, my evidence is within my area of expertise.

3. SCOPE OF EVIDENCE

- 3.1 This evidence is presented on behalf of Waikato-Tainui.
- 3.2 This evidence is provided to address the Landscapes Chapter. The Waikato-Tainui submission (submission 286) and further submission (FS1108) to the Proposed Waikato District Plan is endorsed by the Turangawaewae Marae Trust Board.
- 3.3 The process to which Waikato-Tainui have arrived at this point, in relation to this plan review process, has been a collaborative one. Effort has been made to include mana whenua in the discussion where possible.
- 3.4 Waikato-Tainui seek amendments to the Proposed Waikato District Plan. These amendments are sought to both improve usability of the proposed plan and to ensure the plan provides appropriate environmental protections, as sought by the Waikato-Tainui Environmental Plan, Tai Tumu, Tai Pari, Tai Ao.
- 3.5 Waikato-Tainui have sought particular changes to the Tangata Whenua Chapter and pre-hearing workshops have been requested by the hearings panel to address these matters. Matters regarding the development and use of Maaori Freehold land and also weaving maatauranga Maaori and the Vision and Strategy for the Waikato River throughout the plan are expected to be addressed at that point.
- 3.6 This evidence, is focussed on options to recognise the significance of cultural values of the Waikato River. These values are uniquely and distinctly cultural rather and require recognition beyond being recognised as a subset of associative values as addressed through the Waikato District Landscape Study 2018.

- 3.7 The evidence of cultural landscape expert Mr Antoine Coffin, on behalf of Waikato-Tainui, provides an overview of the assessment approach as contained within the 2018 Waikato District Landscape Study in regards to cultural values. Mr Coffin's evidence identifies how cultural values can be better attributed within this assessment. Mr Coffin however concludes that a specific cultural landscape category, or the identification of the Waikato River as a Maaori Area of Significance, is required to recognise the significance of the Waikato River. Mr Coffin notes that recognising the river as a cultural landscape is a relatively simple task.
- 3.8 The legal submission of Miss Maia Wikaira, on behalf of Waikato-Tainui, sets out the legal status of Te Ture Whaimana and the ability the Proposed Waikato District Plan has to give effect to it, with regard to the Waikato River. Miss Wikaira will also highlight how giving effect to Te Ture Whaimana can be incorporated into the Proposed Waikato District Plan more broadly.
- 3.6 My evidence brief covers:
- Background
 - Waikato-Tainui areas of focus;
 - Waikato-Tainui submission points that have been attributed to Hearing 21A - Landscapes;
 - Cultural Landscape identification and planning provisions to adequately address the Waikato River;
 - The s42a as it applies to the Waikato-Tainui submission; and,
 - Submissions that Waikato-Tainui have further submitted to.

4.0 BACKGROUND

- 4.1 The Waikato-Tainui submission to the Proposed Waikato District Plan sought to ensure that objectives in the tangata whenua chapter were provided for across the plan and also sought greater inclusion of maatauranga Maaori at every opportunity. The submission also sought greater recognition and understanding of the Waikato-Tainui Environmental Plan, Tai Tumu, Tai Pari, Tai Ao, it is anticipated that this understanding could be achieved at an objective level.
- 4.2 Waikato-Tainui, as a Joint Management Agreement Partner, have been available to Waikato District Council to provide assistance and guidance on issues relating to iwi throughout the process. This has included inputs through the Iwi Reference Group alongside other iwi and mana whenua. This offer remains and the hearings panel will see at topic hearings that Waikato – Tainui are not only identifying problems or issues but are seeking to provide a way forward through mutually beneficial solutions.
- 4.3 Whilst the submission was broad in nature, the rationale behind changes sought are focused on key aspects of the Proposed Waikato District Plan. These being the concerns around unplanned development and the associated effects on receiving environments, the treatment of Maaori freehold land, the lack of recognition protection of the Waikato River – Mana o te Awa and the lack of recognition of iwi as kaitiaki and Manawhakahaere.
- 4.4 It should be noted and is identified in the s42A report, that the Waikato River currently has status as an Outstanding Natural Feature and Landscape in the Operative Waikato District Plan.

5.0 RIVER SETTLEMENT AND TE TURE WHAIMANA – VISION AND STRATEGY FOR THE WAIKATO RIVER

- 5.1 The evidence of Ms Donna Flavell provides extensive background and understanding of Te Ture Whaimana from development to its current implementation as the direction setting document for the Waikato River. Below sets out the significant weight of Te Ture Whaimana and the legal context that it sits within.
- 5.2 The Vision and Strategy was developed and published in 2008 under the auspices and direction of the Guardians Establishment Committee. Consultation hui, public open days and meetings with stakeholders and groups who had an interest in the River were held through the Waikato and Waipa River catchments. In addition, submissions were called for and received which guided the formation of the final document.

The Vision and Strategy responds to four fundamental issues as set out below:

1. The degradation of the Waikato River and its catchment has severely compromised Waikato River iwi in their ability to exercise mana whakahaere or conduct their tikanga and kawa;
2. Over time, human activities along the Waikato River and land uses through its catchments have degraded the Waikato River and reduced the relationships and aspirations of communities with the Waikato River;
3. The processes of the Waikato River have been altered over time by physical intervention, land use and subsurface hydrological changes. The cumulative effects of these uses have degraded the Waikato River; and
4. It will take time and commitment to restore and protect the health and wellbeing of the Waikato River.

The Vision is consistent with the overarching purpose of the settlement between Waikato-Tainui and the Crown to restore and protect the health and wellbeing of the Waikato River.¹

There are 13 objectives in Te Ture Whaimana of which eight belong to Waikato-Tainui. It is intended that the Objectives be pursued in order to achieve the Vision contained in the document.

The document also outlines 12 Strategies that will be implemented in order to achieve the objectives. I concur with Mr Coffin in regards to the Objectives and Strategies of Te Ture Whaimana that he deems are most relevant.

- 5.3 The Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act (the Act) became law in 2010. The legislation gave effect to the agreements that were made when the Deed of Settlement was signed between Waikato-Tainui and the Crown in 2009.

The purpose of the Act is to—

- a) have regard to the settlement of raupatu claims under the 2009 deed:
- b) recognise the significance of the Waikato River to Waikato-Tainui:

¹ Vision and Strategy for the Waikato River, Waikato River Authority, 2010

- c) recognise the Vision and Strategy for the Waikato River:
- d) establish and grant functions and powers to the Waikato River Authority:
- e) establish the Waikato River Clean-up Trust:
- f) recognise certain customary activities of Waikato-Tainui:
- g) provide co-management arrangements for the Waikato River:
- h) provide redress to Waikato-Tainui relating to certain assets:
- i) recognise redress to Waikato-Tainui of the Kiingitanga Accord and other accords provided for in the schedule of the Kiingitanga Accord.

5.4 Section 5 of the Act states that –

- (1) The Vision and Strategy is intended by Parliament to be the primary direction-setting document for the Waikato River and activities within its catchment affecting the Waikato River.
- (2) This Act must be interpreted in a manner that best furthers—
 - a) the overarching purpose of the settlement; and
 - b) subsection (1); and
 - c) the agreements expressed in the 2009 deed and the Kiingitanga Accord.

5.5 Section 9 sets out the scope of the Vision and Strategy and states that –

- (1) The Waikato River and its contribution to New Zealand's cultural, social, environmental, and economic wellbeing are of national importance.
- (2) The Vision and Strategy applies to the Waikato River and activities within its catchment affecting the Waikato River.
- (3) The Vision and Strategy is Te Ture Whaimana o Te Awa o Waikato.

5.6 As noted above, the Vision and Strategy is intended by Parliament to be the primary direction-setting document for the Waikato River and activities within its catchment affecting the Waikato River. As such the Vision and Strategy is accorded significant weight in relation to other planning documents and the assessment undertaken in relation to the proposed discharge.

5.7 Section 11 of the Act requires that -

- (1) On and from the commencement date, the Vision and Strategy in its entirety is deemed to be part of the Waikato Regional Policy Statement without the use of the process in Schedule 1 of the Resource Management Act 1991.
- (2) As soon as reasonably practicable after the commencement date, the Council must—
 - a) insert the Vision and Strategy into the policy statement without using the process in Schedule 1 of the Resource Management Act 1991; and
 - b) make consequential amendments to records and publications to reflect paragraph (a).

- (3) On and from the commencement date, the Council must ensure that the policy statement does not remain inconsistent with the Vision and Strategy for any longer than is necessary to amend the policy statement to make it consistent with the Vision and Strategy.
- (4) The Vision and Strategy prevails over the policy statement during any period of inconsistency described in subsection (3)

5.8 While **Section 12** sets out the effect of the Vision and Strategy on Resource Management Act planning documents.

- (1) The Vision and Strategy prevails over any inconsistent provision in—
 - a) a National Policy Statement issued under section 52 of the Resource Management Act 1991; and
 - b) a New Zealand Coastal Policy Statement issued under section 57 of the Resource Management Act 1991.
- (2) The Council must not review or amend under section 79 of the Resource Management Act 1991 the Vision and Strategy inserted in the Waikato Regional Policy Statement.
- (3) A Local Authority must not amend under section 55 of the Resource Management Act 1991 a document defined in section 55(1) of the Act if the amendment would make the document inconsistent with the Vision and Strategy.
- (4) A rule included in a Regional or District Plan for the purpose of giving effect to the Vision and Strategy prevails over a National Environmental Standard made under section 43 of the Resource Management Act 1991, if it is more stringent than the standard.
- (5) A rule included in a Regional or District Plan for the purpose of giving effect to the Vision and Strategy prevails over a Water Conservation Order made under section 214 of the Resource Management Act 1991, if it is more stringent than the order.

6.0 TAI TUMU TAI PARI TAI AO – WAIKATO-TAINUI ENVIRONMENTAL PLAN

6.1 The overarching purpose of the Plan is to provide a map or pathway that will return the Waikato-Tainui rohe to the modern-day equivalent of the environmental state that it was in when Kiingi Taawhiao composed his maimai aroha. To do this, the Plan seeks to:

- Provide the overarching position of Waikato-Tainui on the environment;
- Consolidate and describe Waikato-Tainui values, principles, knowledge and perspectives on, relationship with, and objectives for natural resources and the environment;
- Underpin the development of a consistent and integrated approach to environmental management within the Waikato-Tainui rohe;
- Describe Waikato-Tainui environmental issues;
- Provide tools to enhance Waikato-Tainui mana whakahaere and kaitiakitanga, particularly when participating in resource and environmental management through:
 - (a) Influencing the development of all environmental policies and plans that affect Waikato-Tainui;

- (b) Establishing a framework for resource and environmental management to support tribal members, whether as whaanau, marae, hapuu, or whatever grouping Waikato-Tainui, from time to time, choose to adopt;
 - (c) Providing mechanisms to restore and protect the natural environment of Waikato-Tainui, whilst recognising the reasonable needs of local communities;
 - (d) Actively contributing to the co-management of the Waikato River;
 - (e) Influencing local and national decision makers;
 - (f) Providing a guide for resource users or developers in the Waikato-Tainui rohe;
 - (g) Affecting how and where development may occur; and
 - (h) Providing clear and consistent issues statements, policies, and methods to manage natural resources.
- Provide guidance to external agencies regarding Waikato-Tainui values, principles, knowledge and perspectives on, relationship with, and objectives for natural resources and the environment.

6.2 The Waikato-Tainui Environmental Plan includes the Vision and Strategy for the Waikato River and is included in its entirety in Section C of the plan. Objective 11.7.1 of Section C discusses the weight that the Waikato-Tainui Environmental Plan places in the Vision and Strategy and which decision makers must 'take into account':

11.7.1 Te Ture Whaimana prevails in any resource management, use and activity within the Waikato River catchment in the Waikato-Tainui rohe.

6.3 The Waikato-Tainui Environmental Plan promotes an expectation as to how resources are managed in the rohe, and the Waikato River is a key focus area. The elevated nature of the Vision and Strategy for the Waikato River and the need to take into account the Waikato-Tainui Environmental Plan, provides support and a basis for identifying and recognising the Waikato River as a cultural landscape or Maori Area of Significance and the subsequent controls and considerations that would be associated with such identification of the awa.

6.4 Recognition of cultural landscapes is addressed in chapter 15 of the Waikato-Tainui Environmental Plan. I concur with Mr Coffins evidence in regards to those provisions which are most pertinent to this topic. I have considered these in developing recommended planning provisions in paragraph 9.3

7.0 WAIKATO-TAINUI LANDSCAPE TOPIC SUBMISSION AND FURTHER SUBMISION POINTS

7.1 Waikato-Tainui has three substantive submission points relating to this hearings topic as addressed in the s42A report. These are submission points 286.13, 286.14 and 286.15.

7.2 Submission 286.13 supported the identification of areas of high and outstanding natural character and outstanding natural features and landscapes, and the engagement of experts in this field and with mana whenua.

7.3 Submission 286.14 sought amendment of the Proposed District Plan to include the Waikato River in its entirety as both an Outstanding Natural Feature and an Outstanding Natural Landscape. This submission point further sought amendment of the Proposed District Plan maps to include

the Waikato River in its entirety as both an Outstanding Natural Feature and an Outstanding Natural Landscape.

- 7.4 Submission 286.15 sought Amend the Proposed District Plan after undertaking a natural character assessment for the Waikato River to determine if there are any areas of high or outstanding natural character.
- 7.5 Waikato-Tainui did not submit specifically on the objectives, policies or zone rules related to this topic. However, the submissions points above should be considered alongside three submission points which apply to the plan as a whole, and are of particular relevance to the hearing of this topic and associated plan provisions. Notably, submission 286.7 seeks further recognition of Te Ture Whaimana, submission point 286.8 which seeks alignment of the PWDP with the Waikato-Tainui Environmental Plan and submission 286.11 seeks greater use of of maatauranga Maaori throughout the plan.
- 7.6 It is my opinion that the two solutions, or options, offered by Mr Coffin go a considerable way to addressing the Waikato-Tainui concerns raised in submission point 286.7, 286.8 and 286.11 particularly they relate to the River and its margins.
- 7.7 Notwithstanding these ‘all of plan’ submission points remain unresolved as far as they relate to the plan as a whole. It is in my opinion that these submission points should be considered in the context of each s42A report.
- 7.8 Whilst on this matter I note that further discussion relating to the Vision and Strategy will take place during panel directed and facilitated workshops on this matter in regards to the Tangata Whenua Topic.

8.0 42A REPORT

- 8.1 The 42A author recommends a range of changes in response to submission point matters raised in submissions. I acknowledge those submission and further submission points of Waikato-Tainui which Ms McCartney has recommended for accepting and the associated amendments set out in Attachment 2 of the S42A report. I note that many of the further submissions from Waikato-Tainui were in opposition to submissions points seeking a relaxing of provisions relating to ONFs, ONLs and SALs.
- 8.2 In regard to the further submission points recommended for accepting. I consider that Ms McCartney has provide adequate reasoning for the hearings panel to provide a favourable decision for Waikato-Tainui on these matters.
- 8.3 However, In my opinion the PWDP does not provide for the adequate recognition, protection or enhancement of the cultural values of Waikato River. Cultural values have informed the substantive submission point on this topic (286.14) which sought identification of the Waikato River as an ONF and ONL.
- 8.4 This brings me to Mr Coffin’s evidence. At paragraph 73 Mr Coffins evidence highlights that the current methodology of landscape assessment, as adopted in the 2018 District Landscape Study, subsumes Maaori cultural values.
- 8.5 Mr Coffins expert evidence identifies two solutions which as he illustrates better recognise the Maaori cultural values of the Waikato River then when considered through landscape

assessment methodologies in regards to identifying Outstanding Natural Feature and Outstanding Natural landscape.

9.0 THE WAIKATO RIVER AS A CULTURAL LANDSCAPE OR MAAORI AREA OF SIGNIFICANCE

9.1 In a planning context, Mr Coffins two solutions should be seen as in addition to the current identification of outstanding natural features and landscapes. These are the identification of the river as a Cultural Landscape or as a Maaori Area of Significance.

9.2 I further note recent recognition of Cultural Landscapes by Resource Management Review Panel. The panel has recognised that specific outcomes should be provided for 'tikanga Māori', including for the relationships of mana whenua with cultural landscapes. At paragraph 57 of the report they propose:

cultural landscape to be "a defined area or place with strong significance for mana whenua arising from cultural or historical associations and includes connected natural, physical or metaphysical markers or features". This is an important change. Recognition of interconnections and that a cultural landscape can be 'more than the sum of its parts' will enable the multi-faceted relationships that mana whenua have with land and water to be adequately protected and restored.

9.3 In regard to identification of waterbodies as sites or areas of significance to Maaori in a Territorial Local Authority context, I note that the Christchurch City Plan identifies a number of rivers as such. However, there is one distinction in the RMA hierarchy in regards to this comparison which is particularly relevant in regards to establishing planning provisions. That is Te Ture Whaimana establishes a considerably different planning context that requires protection and restoration.

I consider that Mr Coffins evidence provides workable alternatives which more appropriately capture Maaori cultural values of the River and which are central to the Waikato-Tainui submission.

9.4 I further consider that Mr Coffins Approach is aligns with the intended approach of the Proposed Waikato District Plan, as captured in section 2.1(a) which reads as follows:

The plan uses a holistic cultural and ethical approach to resource management and takes into account the principles of the Treaty of Waitangi, in particular the idea of active involvement. Partnership is approached through the recognition of iwi plans and ongoing consultation. The introduction of a Tangata Whenua section is to provide background and better understanding of Maaori issues. It is a new approach that is further supported by objectives, policies, rules and methods more specific to Maaori aspirations. It is thought that this approach will enable an improved presence of Tangata Whenua throughout the plan and the relevant objectives, policies, rules and methods to be given more consideration.

10.0 PLANNING PROVISIONS

10.1 In my opinion current PWDP provisions do not adequately address the Maaori cultural values of the Waikato River that are highlighted in Mr Coffin's Evidence.

10.2 As noted in Paragraph 8.5 above Mr Coffins evidence identifies two potential options to recognise the cultural significance of the Waikato River. These options are informed by a framework of 10 values. It is the river as a whole and these values that require recognitions within the PWDP.

10.3 In my opinion plan provisions can be developed to address the Waikato River its Margins and values. In my opinion, to address this additional plan provisions are necessary to cover, at least, the following:

- Spatial identification of the river and its margins as an Outstanding Cultural Landscape / Maaori Area of Significance in a schedule and on the planning maps. A practicable spatial extent would be the river inclusive of a 32m setback, being determined by the largest setback currently applied to the Waikato River in the building setback rules.
- Identification of the values of the river, as addressed by Mr Coffin, within a schedule of the PWDP.
- Objectives and policies articulating protection and restoration of the maaori cultural values of the Waikato River. Based on the current structure of the plan these would be best located within the Tangata Whenua Chapter (Chapter 3). However, in light of the NZ Planning Standards, these would be best addressed in a stand-alone or unique manner so that they can re-located to a Sites and Areas of Significance to Maaori Chapter when necessary.
- A Discretionary Activity rule for new activities, buildings, earthworks and subdivision within the identified Outstanding Cultural Landscape. Based on the current structure of the plan these would be best located across all zones which intersect with the Waikato River Outstanding Cultural Landscape. However, in light of the NZ Planning Standards, these would be best addressed in a stand-alone or unique manner so that they can re-located to a Sites and Areas of Significance to Maaori Chapter when necessary.
- Explicit control of surface water activities within the Outstanding Cultural Landscape including permitted provisions for non-commercial and recreational use of the river².
- Matter(s) of discretion for activity rules with a Restricted discretionary activity within the Waikato River Catchment to capture Waikato-Tainui values within the above framework.
- Information requirements to include the provision of cultural value assessments and the requirement for these to be commensurate with the scale of a proposal and its associated effects.
- Information requirements specifying applicants address the Waikato-Tainui Environmental Plan as it relates to a proposal. These two should be commensurate with the scale of the proposal and its associated effects³.

11.0 CONCLUSION

11.1 I believe this Landscape Chapter hearing provides a significant opportunity for Waikato District Council to give effect to the Te Ture Whaimana.

11.2 As identified by Mr Coffin a weakness exists in contemporary landscape assessments, in regards to the weighting of Maaori cultural values. Mr Coffin identifies the fact that under the WESI Criteria, maaori cultural values are but a portion of a third in terms of weighting in this assessment framework. This approach results in an iconic waterway, to which the District is named after and has specific legislation to guide the restoration of, not being afforded an outstanding status.

² The Proposed District Plan applies rural zone provisions to surface water activities. Neighbouring councils (Waipa and Hamilton) contain specific surface water provisions limiting commercial use of the surface of waterbodies.

³ As per the Operative Waikato District Plan

- 11.3 The opportunity exists for Waikato District Council to be a leader at local government level, with respect to appropriately addressing Maaori cultural values. The introduction of an Outstanding Cultural Landscape along with plan provisions covering the matters I address in paragraph 10.3 would assist in giving give effect to Te Ture Whaimana and afford the Waikato River the recognition it deserves in the PWDP.