

UNDER the Resource
Management Act 1991

AND

IN THE MATTER of a hearing by Independent
Commissioners on behalf of Waikato District Council

of the

Turangawaewae Trust Board Submission to the
Proposed Waikato District Plan

Hearing 21B Landscapes

STATEMENT OF EVIDENCE

PROVIDED BY

Gavin Rhys Donald

ON BEHALF OF

TURANGAWAEWAE MARAE TRUST BOARD

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, Turangawaewae Trust Board (TTB) and many iwi and hapu groups 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 Turangawaewae Trust Board.
- 3.2 This evidence is provided to address Landscapes Chapter. TTB are a submitter (submission 984) and further submitter (FS1139) to the Proposed Waikato District Plan. TTB have elected not to present in person but to support and endorse the presentations of Waikato-Tainui
- 3.3 TTB 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.
- 3.4 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.
- 3.5 My evidence brief covers:
- Background
 - Turangawaewae Trust Board areas of focus;
 - TTB submission points that have been attributed to Hearing 21B - Landscapes;
 - Cultural Landscape identification and planning provisions to adequately address the Waikato River;
 - The s42a as it applies to the TTB submission and further submission.

4.0 BACKGROUND

- 4.1 The TTB 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 Whilst TTB have elected to support Waikato-Tainui but not present at previous hearings, TTB have monitored proceedings and how discussions may affect areas of interest to TTB. The development of thinking as to how to best address the Waikato River is an example of where TTB have provided inputs into the Waikato-Tainui approach.
- 4.3 This hearing provides an opportunity for TTB Chairperson Hinerangi Raumati-Tu'ua to present to you as a panel for the first time. Mrs Raumati-Tu'ua will address an overarching importance of Turangawaewae Marae in the Ngaruawahia and Waikato-District context. Mrs Raumati-Tu'ua will also highlight the significant linkages that the marae has with the Waikato River.

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

- 5.1 TTB understand that Ms Donna Flavell on behalf of Waikato-Tainui has provided extensive background and understanding of Te Ture Whaimana from development to its current implementation as the direction setting document for the Waikato River. TTB have complete confidence in the ability of Ms Flavell to communicate this journey and the importance of Te Ture Whaimana. It is not intended that this evidence will replicate that provided by Waikato-Tainui but reinforce its importance of Te Ture Whaimana, at marae and hapu level. 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.

- 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:
- 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.

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

(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.

7.0 TTB LANDSCAPE TOPIC SUBMISSION AND FURTHER SUBMISION POINTS

- 7.1 TTB have three substantive submission points relating to this hearings topic as addressed in the s42A report. These are submission points 984.17, 984.18 and 984.19.
- 7.2 Submission 984.17 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 984.18 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 984.19 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 TTB 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 984.11. seeks further recognition of Te Ture Whaimana through earthworks setbacks from waterbodies, submission point 984.4 which seeks greater regard given to the Waikato-Tainui Environmental Plan and submission 984.3 seeks greater use of maatauranga Maaori throughout the plan.
- 7.6 TTB are supportive of the alternate approach proposed by Waikato-Tainui and their experts. It is my opinion that the two solutions, or options, offered by Waikato-Tainui experts go a considerable way to addressing the concerns raised in submission point 984.11, 984.4 and 984.3 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.

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 TTB 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 TTB were in opposition to submissions points seeking a relaxing of provisions relating to ONFs, ONLs and SALs,

TTB support the highest levels of protection for the Waikato River possible, hence the further submission points.

- 8.2 In my opinion the PDP 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 (984.18) which sought identification of the Waikato River as an ONF and ONL.
- 8.3 The evidence of Waikato-Tainui highlights the real challenges in recognising and weighting cultural values in a landscape assessment.
- 8.4 I am supportive of the Waikato-Tainui expert evidence that identifies two solutions which 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 TTB supports the identification of the river as a Cultural Landscape or as a Maaori Area of Significance. Whilst not a classification or category currently proposed in District Plan, the potential to identify an outstanding cultural landscape is an alternate option that would provide an innovative solution to the challenges the council s42A report has in giving effect to Te Ture Whaimana.
- 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 Teritorial 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 the Waikato-Tainui expert evidence provides workable alternatives which more appropriately capture Maaori cultural values of the River.

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 this evidence and those of Waikato-Tainui.

10.2 I am of the opinion that the alternate approaches provided by Waikato-Tainui Board are appropriate and give effect to Te Ture Whaimana

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 a 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 32.5m 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 the evidence of Waikato-Tainui, 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 Waikato River Cultural Landscape. Based on the current structure of the plan these would be best located across all zones which intersect with the Waikato River 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 Waikto River 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 full effect to the Te Ture Whaimana.

11.2 As identified in this evidence and that of Waikato-Tainui a weakness exists in the New Zealand Planning system framework that does not provide appropriate weighting to cultural values. This is clearly highlighted by the fact that an iconic waterway, to which the District is named

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

after and has specific legislation to guide the restoration of, cannot as of right be deemed an outstanding natural feature or landscape.

- 11.3 The opportunity exists for Waikato District Council to be a leader at local government level, with respect to appropriately addressing cultural values. The introduction of an Outstanding Cultural Landscape would have the ability to give effect to Ture Whaimana and the Waikato River afforded the recognition it deserves. By providing an overlay in the District Plan that requires cultural values to be assessed as a matter of discretion, allows relatively simply, consideration to be given to said values and thus giving effect to Te Ture Whaimana.
- 11.4 The ability of the Waikato District Plan to recognise the Waikato River as outstanding should not require the creation of a new title which to some degree limits the recognition of the awa beyond cultural values, other user groups may feel that their value for the Waikato River is not recognised. However, the mechanisms, including overlays and matters of discretion; mean the awa is provided with protections and weight equivalent to an Outstanding Natural Feature or Landscape.