

**IN THE MATTER OF**

Schedule 1 of the Resource Management  
Act 1991

**AND**

**IN THE MATTER OF**

the hearing of submissions on proposed Plan  
Change 1: Waikato and Waipaa River  
Catchments to the Waikato Regional Plan

**BY**

**Waikato River Authority**  
Submitter

---

**OPENING SUBMISSIONS BY COUNSEL FOR WAIKATO RIVER AUTHORITY**  
**13 MARCH 2019**

---

**BUDDLEFINDLAY**  
Barristers and Solicitors  
Wellington

Solicitors Acting: **Paul Beverley**  
Email: paul.beverley@buddlefindlay.com  
Tel 64-4-499 4242 Fax 64-4-499 4141 PO Box 2694 DX SP20201 Wellington 6140

## **MAY IT PLEASE THE COMMISSIONERS**

### **Introduction**

1. The Waikato River Authority ('**WRA**') made a submission and further submission on Plan Change 1 ('**PC1**') and evidence has been filed on behalf of the WRA by Mr Robert Penter, the Chief Executive of the WRA.
2. A description of the WRA and Te Ture Whaimana (the Vision and Strategy) is set out in the evidence of Mr Penter. Consequently, only the key matters will be emphasised briefly in these submissions before the Commissioners hear from Mr Penter.

### **The Context**

3. It is critical for the Commissioners to be aware of the context that sits behind the Waikato / Waipaa River arrangements.
4. Those arrangements arise out of significant and lengthy negotiations between the Crown and five Iwi of the Waikato / Waipaa Rivers.
5. Those negotiations resulted in Deeds and ultimately three Acts of Parliament:
  - (a) the Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010;
  - (b) the Ngāti Tuwharetoa, Raukawa, and Te Arawa River Iwi Waikato River Act 2010; and
  - (c) the Ngā Wai o Maniapoto (Waipā River) Act 2012.
6. It is very important to emphasise that:
  - (a) this background context (including in relation to the Treaty settlements and agreements which gave rise to these arrangements over the Waikato / Waipaa Rivers) is relevant and highly significant, and brings into play the principles of the Treaty of Waitangi as recognised through section 8 of the RMA, and other provisions such as section 6(e) and 7(a) of the RMA; and
  - (b) there are a unique set of specific statutory provisions relating to the Vision and Strategy which make it one of the most powerful planning documents in New Zealand.

## **The WRA**

7. The WRA was established as an independent statutory authority under the Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010 and the Ngāti Tuwharetoa, Raukawa, and Te Arawa River Iwi Waikato River Act 2010, and the WRA has additional functions under the Ngā Wai o Maniapoto (Waipā River) Act 2012.
8. The purpose of the WRA is to:<sup>1</sup>
  - (a) set the primary direction through the Vision and Strategy to achieve the restoration and protection of the health and wellbeing of the Waikato and Waipaa Rivers for future generations;
  - (b) promote an integrated, holistic, and co-ordinated approach to the implementation of the Vision and Strategy and the management of the Waikato and Waipaa Rivers; and
  - (c) fund rehabilitation initiatives for the Waikato and Waipaa Rivers in its role as trustee for the Waikato River Clean-up Trust.
9. The WRA has broad functions relating to the Waikato / Waipaa Rivers, including to:<sup>2</sup>

*“engage with and provide advice to local authorities on amending RMA planning documents to make them give effect to the vision and strategy”.*
10. In his evidence Mr Penter describes the role of the WRA in the PC1 process.

## **The Vision and Strategy**

11. As noted above, the WRA has the key statutory functions that relate to the Vision and Strategy.
12. Section 5 of the Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010 sets out the ‘guiding principles for interpretation’:

---

<sup>1</sup> See for example section 22 of the Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010.

<sup>2</sup> See for example section 23(2)(a) of the Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010.

## **5 Guiding principles of interpretation**

*(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.*

13. The status of the Vision and Strategy has already been covered by other parties in these hearings, and this will not be repeated in detail.
14. By way of summary:<sup>3</sup>
- (a) the Vision and Strategy is a central element of the unique legislation enacted in relation to the Waikato and Waipaa Rivers;
  - (b) the Vision and Strategy is intended by Parliament to be the 'primary direction setting document' for the Waikato and Waipaa Rivers;
  - (c) again, the legislation reflects a long history and recognises the mana of the rivers themselves, and the significance of the relationship between the Iwi and the rivers;
  - (d) the Vision and Strategy is unique under the RMA in that it has been incorporated directly into the Waikato Regional Policy Statement (**RPS**), and the rest of the RPS must be consistent with the Vision and Strategy;
  - (e) the Vision and Strategy prevails over any inconsistent provision in an NPS or the NZCPS, and amendments cannot be made to RMA planning documents to give effect to an NPS/NZCPS, if that would make the document inconsistent with the Vision and Strategy; and
  - (f) a regional plan must 'give effect to' the Vision and Strategy.

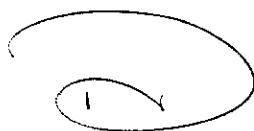
---

<sup>3</sup> See for example sections 10 to 13 of the Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010.

15. Those layers reinforce the pre-eminent weight to be afforded to the Vision and Strategy through this PC1 process. There is no other example nationally of an external document that is to be given greater weight and effect through RMA planning processes.
16. The Vision and Strategy must be 'given effect to' through PC1, and that expression has been described by the Supreme Court in the *Environmental Defence Society v New Zealand King Salmon*<sup>4</sup> decision as follows:
- “ ‘Give effect to’ simply means ‘implement’. On the face of it, it is a strong directive, creating a firm obligation on the part of those subject to it.”<sup>5</sup>
17. For those reasons it is respectfully submitted that the Commissioners need to give significant weight to the Vision and Strategy in its decision. As Mr Penter explains, the position of the WRA on PC 1 is that it:
- (a) supports PC1 (and Variation 1) as a whole, in particular as it relates to restoring and protecting the health and well-being of the Waikato and Waipaa Rivers and all they embrace for future generations; and
  - (b) does not support its withdrawal (as recommended in submissions as noted in section 108 of the section 42A report).

### Conclusion

18. The WRA appreciates the opportunity to appear before the Commissioners. This is a matter that is central to the purpose and functions of the WRA, and is of the utmost importance to it.
19. The WRA is happy to appear again if that would assist the Commissioners and to answer any further queries that the Commissioners may have in relation to the Vision and Strategy.



---

<sup>4</sup>[2014] NZSC 38.  
<sup>5</sup>At [77].

**Paul Beverley**

Counsel for the Waikato River Authority

13 March 2019