

**BEFORE**

the Hearings Panel

**IN THE MATTER**

of the Pukehāngi Heights Streamlined Planning Process (**SPP**) under Part 5, Sub-Part 5 and Schedule 1 Part 5 of the Resource Management Act 1991 (the **Act**)

**AND**

**IN THE MATTER**

of Rotorua Lakes Council's Proposed Change 2: Pukehāngi Heights to the Rotorua District Plan

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**MEMORANDUM OF COUNSEL IN RELATION TO SUPPLEMENTARY MATTERS**

**DATED 22 SEPTEMBER 2020**

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**SUPPLEMENTARY MATTERS**

1. Ngāti Kearoa Ngāti Tuarā, Ngāti Whakaue, and Te Arawa Lakes Trust (**Trust**) presented a joint case to the Hearings Panel on 21 September 2020.
2. In response to legal submissions and the evidence presented, the Hearings Panel requested the groups provide additional or revised amended wording for consideration, along with further explanation for the rationale of certain changes made via the S42A Planning Report.
3. This memorandum responds to that request.

**Performance Standard A5.2.3.4.10a. and A5.2.4.4.6a. – “where relevant”**

4. A question was raised about the qualifying word “where relevant” in the amended performance standard A5.2.3.4.10a. and A5.2.4.4.6a. which reads:
  - a. Report on the outcomes of consultation with Ngāti Kea Ngāti Tuarā and, where relevant, with other Te Arawa iwi and hapu with associations with the cultural landscape including downstream sites and values;
5. The submitters preference is for this performance standard to remain as worded. The concern is that activities may be proposed with effects which require broader consultation than with those Te Arawa iwi and hapū listed as affected parties in plan change. Such iwi and hapū would be identified on a case by case basis dependent on effects and with reference to records kept under section 35A of the RMA. While other iwi and hapū have not participated in this plan change process it is not appropriate for any iwi or hapū to lose status, as a party to be consulted with, through this process.

### **Affected Party Status**

6. A question was raised about whether the identified matters in the amended non-notification provision could be removed with the groups then simply being identified as affected parties for any application for resource consent for the activities listed in Tables A5.2.3.1a4 -11, A5.2.4.1 a 5-7 and A5.2.5.1. The relevant wording is:

....any application that has potential effects on culturally significant sites, downstream water quantity, downstream water quality or Lake Rotorua water quality will require the written approval of Te Rūnanga o Ngāti Kearoa Ngāti Tuarā Trust, Ngāti Whakaue, and Te Arawa Lakes Trust in order to proceed without limited notification

7. These are the matters which Te Rūnanga o Ngāti Kearoa Ngāti Tuarā Trust, Ngāti Whakaue, and Te Arawa Lakes Trust have identified as requiring affected party status to recognise and provide for their relationship with their ancestral whenua, awa and roto. However, some of the activities listed in the tables may not give rise to effects on these matters. Te Rūnanga o Ngāti Kearoa Ngāti Tuarā Trust, Ngāti Whakaue, and Te Arawa Lakes Trust are not seeking affected party status in relation to all matters. Furthermore, a blanket identification of the submitters as affected parties gives rise to resourcing issues.

### **Direction to “protect” downstream water quality**

8. A question was raised about the use of the word “protect” in the further wording sought to Objective 2. The relevant wording is:

The environmental quality, character, amenity and cultural values of the Pukehangi Heights Development Area are developed and then maintained and enhanced through appropriate urban planning and design including stormwater treatment design which protects downstream water quality.

9. Where downstream water quality is already degraded (which is the case) an aim to protect it may not achieve the desired outcome. Alternative wording could be:

... including stormwater treatment design which maintains, or enhances where degraded, downstream water quality.

**New Policy – Refuse Consents – downstream flood risk**

10. A request was made that suggested wording be provided for a new Policy which addresses more exactly the submission relief that applications which do not demonstrate that they will avoid an increase in downstream flood risk will be refused consent.
11. The following is suggested:

**New Policy – No Increase in Flood Risk**

Ensure that there is no increase in flood risk in the downstream catchment by declining any resource consents for subdivision, use or development that cannot demonstrate that their proposed activity will not increase the risk.

OR

Ensure that there is no increase in flood risk in the downstream catchment by declining any resource consents for subdivision, use or development unless the applicant can demonstrate that any increase in flood risk will be avoided.

12. Such policy would sit alongside the S42A Planning Report recommendation that applications which cannot demonstrate no increase in flood risk are non-complying activities (which continues to be supported by the groups).

**New Method - Resourcing**

13. A request was made that some suggested wording be provided for a new Method dealing with concerns about a lack of adequate resourcing for tangata whenua participation in RMA processes.
14. The following is suggested:

**New Method – Support Tangata Whenua Participation**

Support and facilitate tangata whenua participation in resource management processes, including by providing resourcing.

## **Te Tūāpapa o ngā Wai o te Arawa and He Mahere Taiao mō ngā Wai o Te Arawa**

15. A request was made to provide the referenced objectives (5.1A and 5.1B) and policy (5.11) of He Mahere Taiao mō ngā Wai o Te Arawa (Te Arawa Lakes Environmental Plan). They are:

### **Objective 5.1A**

Te mā o te wai e rite ana kia kite i ngā tapuwae ā te kōura.

The quality of the water is such that you can see the foot steps of the koura.

### **Objective 5.1B**

Land and freshwater planning and management:

- Affords greater priority to the natural limits of the Lakes; lands; and, freshwater that feeds into the Lakes.
- Recognises the values and interests of mana whenua.
- Recognises the intergenerational knowledge and experience of mana whenua.
- Values the role of Te Arawa as a Treaty partner.
- Values the role of TALT as Lakebed owner.
- Encourages collective responsibility for the care and use of land and water.

### **Water & Land Policies**

#### **Integrated Management**

##### **Policy 5.1.1**

Regional and District Councils to value and manage the Lake catchments as a network of interconnected ecosystems. This includes recognising the localised and cumulative effects of land use and development on:

- a) The health and wellbeing of Te Arawa Lakes.
  - b) Taonga fish and plant species found in, and around, the Lakes.
  - c) Te Arawa cultural practices, heritage and identity
16. Both Te Tūāpapa o ngā Wai o te Arawa (Te Arawa Cultura Values Framework) and He Mahere Taiao mō ngā Wai o Te Arawa (Te Arawa Lakes Environmental Plan) are publicly available on Te Arawa Lakes Trust website. For convenience, an electronic copy of both documents is provided with this Memorandum.

**DATED** 22 September 2020

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**Lara Burkhardt**

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