

BEFORE

the Hearings Panel

IN THE MATTER

of the Resource Management Act 1991

AND

IN THE MATTER

Rotorua District Plan Change Two – Pukehāngi Heights

**SUMMARY OF STATEMENT OF PLANNING EVIDENCE OF DAVID JEFFERY
MARSHALL ON BEHALF OF TE ARAWA LAKES TRUST**

21 September 2020

INTRODUCTION

1. My full name is David Jeffery Marshall. I am a self-employed consulting planner.
2. My evidence addresses the following topics:
 - (a) Particular relevant statutory considerations;
 - (b) Cultural sites and associations;
 - (c) Stormwater and water quality;
 - (d) Stormwater and flooding; and
 - (e) Lake Rotorua nutrient management.
3. In my evidence I address the common points in the Ngāti Kearoa Ngāti Tuarā, Ngāti Whakaue and Te Arawa Lakes Trust (**the Trust**) submissions collectively.

STATUTORY CONSIDERATIONS

Resource Management Act 1991

4. In my view the potential adverse effects arising from Rotorua District Plan Change 2 - Pukehāngi Heights (**the Plan Change**) as identified in submissions of Ngāti Kearoa Ngāti Tuarā, Ngāti Whakaue and the Trust, and described in the evidence of Lani Kereopa and Robyn Bargh, are significant effects on the relationship of Māori with their ancestral taonga and should be evaluated in terms of section 6(e) of the RMA. I also consider the submissions made and evidence presented to be active exercises in kaitiakitanga, seeking to maintain that relationship, and the role of Te Arawa as hunga tiaki (which I am advised is the Te Arawa term for kaitiaki).
5. In terms of the principles of the Treaty of Waitangi I consider that the principle of partnership must be taken into account as The Te Arawa Settlement Deed and Act establishes the Rotorua Te Arawa Lakes Strategy Group as a partnership between the Trust and local authorities for the management of the lakes¹.

¹ Nicola Douglas Evidence paragraph 7.

National Policy Statement on Freshwater Management 2020

6. The Plan Change provisions that relate to freshwater must give effect to the relevant provisions of the National Policy Statement on Freshwater Management 2020 (**NPS-FM**)². The NPS-FM establishes Te Mana o te Wai as a fundamental concept for freshwater management³. It requires that local authorities actively involve tangata whenua in identifying the local approach to Te Mana o te Wai when changing district plan provisions that relate to freshwater management⁴. In my view the submissions and evidence of Ngāti Kearoa Ngāti Tuarā, Ngāti Whakaue and the Trust made in regard to freshwater quality should be evaluated with regard to those provisions.

Te Tūāpapa o ngā Wai o Te Arawa and He Mahere Taiao mō ngā Wai o Te Arawa

7. In my view the provisions of Te Tūāpapa o ngā Wai o te Arawa (**Te Tūāpapa**) and He Mahere Taiao mō ngā Wai o Te Arawa (**He Mahere Taiao**) should be taken into account. This includes objectives 5.1A and 5.1B and subsequent policies which include affording greater priority to the natural limits of the lakes and freshwater, and recognising the local and cumulative effects of land use and development on the health and wellbeing of Te Arawa Lakes⁵.

CULTURAL SITES AND ASSOCIATIONS

8. The Ngāti Kearoa Ngāti Tuarā, Ngāti Whakaue and Trust submissions (22.0, 10.4, 42.0 and 10.0–10.3) seek a number of amendments to the introduction, policies and performance standards of the Plan Change to include recognition of relevant Te Arawa iwi and hapū and the wider cultural landscape. It is also sought that policy 2.9 be expanded to include discovered as well as known culturally significant sites. The submissions seek that the provisions of the Plan Change identify tangata whenua as affected parties in the consideration of resource consent applications.
9. I consider that the S42A Report adequately evaluates these submission points and I support the recommended amendments at paragraphs 8.141 through to 8.149 of the report. In particular I consider it appropriate to identify

² RMA s75 (3) (a).

³ Clause 1.3 (1) and (2).

⁴ NPS-FM Clause 3.4 (1) (a) and (b).

⁵ He Mahere Taiao Policy 5.1.1

Ngāti Kearoa Ngāti Tuarā, Ngāti Whakaue and the Trust as affected parties in regard to potential effects on culturally significant sites, downstream water quantity, downstream water quality and Lake Rotorua water quality in order to comply with 6(e) of the RMA.

STORMWATER AND WATER QUALITY

10. The Ngāti Kearoa Ngāti Tuarā, Ngāti Whakaue and Trust submissions (22.3,10.4 and 42.4) seek that any decrease in downstream water quality from development within the Pukehāngi Structure Plan be avoided. The s42A Report recommends rejecting these submissions on the basis that there is already sufficient direction under the Operative Regional and District Plans to ensure that offsite effects are addressed.
11. I note that there are already Regional and District Plan provisions relating to stormwater quality. In particular District Plan objective 13.3.2 and policy 13.3.2.1 as referred to in the s42A Report⁶. However I note that those provisions refer to subdivision design only contributing to water quality improvements and avoiding, remedying or mitigating adverse effects. I do not consider these general district plan provisions to be specific enough to the potential adverse effects of development in the Plan Change area. In my view the provisions should direct land use change to protect downstream water quality in order to avoid the adverse effects of decreases in water quality as identified in submissions and evidence.
12. Therefore I do not consider that the existing plan change provisions address the concerns of tangata whenua. I also note that the direction to use low impact stormwater design principles in policy 2.3 clearly has intended downstream water quality benefits although the policy sits under an objective that only refers to environmental quality within the structure plan area. I consider that the lack of an objective relating to downstream water quality is inconsistent with the addition in the Plan Change of a specific objective on downstream water quantity (objective 3).
13. I therefore consider that objective 2 should be amended as follows:

⁶ Section 42A report paragraph 7.25

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.

STORMWATER AND FLOODING

14. The Ngāti Kearoa Ngāti Tuarā, Ngāti Whakaue and the Trust submissions (22.2, 42.6 and 10.4) seek that any increase in downstream flooding be avoided. The submissions seek that a strong policy direction be added to the Plan Change stating that applications which do not demonstrate that they will avoid an increase in downstream flood risk will be refused consent.
15. I note evaluation of the potential downstream flooding effects of the change to urban land use and the development of appropriate provisions has proved problematic during the Plan Change process. In order to assist in evaluating the Plan Change the Trust has engaged an independent stormwater engineer (Sean Finnigan - Director, Environmental Engineering, Fraser Thomas Ltd) to advise on the Trust and participate in expert caucusing. Mr Finnigan's advisory memo is attached to my full evidence as **Appendix One**.
16. I do consider it necessary for the Plan Change to contain a clear policy direction on increased downstream flood risk. However I recognise that it is problematic for policies to direct that resource consent applications be refused. Consequently I support the recommendations in the S42a Report⁷ making applications which cannot demonstrate no increase in flood risk non-complying activities.

LAKE ROTORUA NUTRIENT MANAGEMENT

17. The Ngāti Kearoa Ngāti Tuarā, Ngāti Whakaue and Trust submissions (22.3, 42.5, 10.3 and 10.5) seek that the Plan Change not proceed without robust modelling that demonstrates nutrient flows within the catchment will be reduced.
18. I note that management of nutrient flows in the Lake Rotorua catchment occurs within the context of an integrated framework of operational actions

⁷ Section 42A report paragraphs 8.265 and 8.266

and policy instruments developed as part of the Rotorua Te Arawa Lakes Programme to protect and improve water quality in the lakes.

19. In my view given the established importance of reducing nutrient flows to Lake Rotorua and the provisions of the NPS-FM it is necessary for the Plan Change to address the changes in nitrogen flows in the catchment arising from the Pukehangi Structure Plan.
20. I therefore generally support the introduction of new principles, objectives policies and methods to address this issue as recommended in the S42A report⁸. However I consider that to be consistent with existing provisions in the District Plan, which seek substantial reductions in nutrient flows from subdivision⁹, and the RPS provisions, which require managed reductions in nitrogen flows, these new provisions should also direct that nutrient flows be reduced to achieve the RPS targets. I do not consider that an objective of no net increase in nitrogen flows can be stated to contribute to water quality improvements. Furthermore I do not consider that these necessary limits on nutrients should be subject to a practicability qualifier as recommended for new policy 5.1.
21. I therefore recommend that the new provisions be amended as follows:

New General Principle

Development that is designed within nutrient management limits and contributes to the ~~no net increase~~ reduction in nitrogen entering Lake Rotorua.

New Objective 5 Pukehāngi Heights Development Area – Nutrient Management

Development within the Pukehāngi Heights Development Area results in ~~no net increase in~~ decreases in nutrient losses thereby contributing to water quality improvements in Lake Rotorua.

New Policy 5.1 Subdivision and land use shall, ~~where practicable~~, be designed to achieve nutrient losses within the nutrient limits of the land.

22. I support the intent expressed in the s42A Report that these provisions and the subsequent policies and methods be considered interim measures until district wide provisions are developed which are integrated with the final form of regional plan controls.

⁸ S42A report paragraphs 7.30, 7.31, 8.181 and 8.182.

⁹ Policy 13.3.1.1