

BEFORE THE HEARING COMMISSIONERS

IN THE MATTER OF the Resource Management Act 1991

AND The Proposed Natural Resources Plan
for the Wellington Region

AND Hearing 1 – Overall Policy
Framework, Beneficial Use and
Development and Sites of
Significance to Mana Whenua

Hearing Speaking Notes of **Phillip Percy**

on behalf of Rangitāne Tū Mai Rā Trust and Rangitāne o Wairarapa

Dated: 24 May 2017

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INTRODUCTION

1. I have prepared a statement of planning evidence for Hearing 1 dated 9 May 2017 on behalf of Rangitāne o Wairarapa and Rangitāne Tū Mai Rā Trust. This evidence was pre-circulated.

KEY POINTS

2. While you have had the opportunity to pre-read my evidence in chief, I would like to draw the Panel's attention to the following key issues identified in my evidence:
 - a. Statutory obligations for the PNRP
 - i. The Plan should 'cover the field' in terms of addressing the resource management issues and assisting the Council perform its functions, even as an interim plan.
 - ii. The objectives must be designed to achieve the purpose of the Act, the policies to achieve the objectives, and the rules and methods to achieve the policies. The policies and methods must be effective (and efficient) in achieving the objectives.
 - b. Drafting of the objectives and policies
 - i. The objectives should be drafted as outcome statements
 - ii. There should be logical interaction between objectives with a cohesive structure
 - iii. The policies should direct how the objectives will be achieved to assist decision-makers
 - iv. Management of cumulative effects must be an essential consideration when designing policies and methods
 - c. Management of sites of significance to mana whenua:
 - i. Management of Nga Taonga Nui a Kiwa and other sites of significance should be comprehensive and integrated.

- ii. Other key outcomes set out in objectives are integral to management of sites of significance to mana whenua and the Plan should be clear about the interplay between the outcomes.

STATUTORY OBLIGATIONS OF THE PLAN

3. The statutory obligations for the Plan are set out in Amber Carter's s42A Report.
4. The Council has elected to implement what could be described as a staged plan development process. The first stage of the process has involved the development of the current notified plan that is the subject of this hearing. Subsequent stages will involve the introduction of whaitua-specific provisions that arise from the Whaitua Committee process. The basis of the staged plan development process is underpinned by the staged implementation of the NPS-FM as provided for in Policy E1 of that policy statement.
5. The purpose of the NPS-FM as set out in s45 of the Act is:

[...] to state objectives and policies for matters of national significance that are relevant to achieving the purpose of this Act.

6. The purpose of the PNRP as set out in s63 of the Act is:

(1) The purpose of the preparation, implementation, and administration of regional plans is to assist a regional council to carry out any of its functions in order to achieve the purpose of this Act.

(2) Without limiting subsection (1), the purpose of the preparation, implementation, and administration of regional coastal plans is to assist a regional council, in conjunction with the Minister of Conservation, to achieve the purpose of this Act in relation to the coastal marine area of that region.

7. Section 66 of the Act says that the Regional Council must prepare its regional plan in accordance with, among other things, its functions under s30 and the provisions of Part 2.
8. The functions of the Council, and the provisions of Part 2 of the Act apply whether or not a national policy statement is in place. In other words, the Council's functions under the Act are not dormant until such time as an NPS is developed. That is logical in a planning

sense because resource management at the local and regional level can benefit from national guidance, but efficient and effective planning responses are not reliant on it.

9. Furthermore, taking a staged approach to implementing an NPS does not absolve the Council of the obligations it has under s63, s66 and s30 of the Act, which apply irrespective of whether or not an NPS is in place. The ability to take a staged approach to implementing an NPS should not be extrapolated to also mean that it is appropriate to take a staged approach to meeting the Council's obligations under s63, s66 and s30. My concern is that that is what the Council has effectively done with significant parts of the PNRP.

DRAFTING OF OBJECTIVES AND POLICIES

10. From para 26 of my evidence, I discuss the manner in which the objectives of the Plan are drafted. The core issue I have identified is that the objectives typically do not describe a desired end state. In my opinion, good objectives should be specific as to what resource or environmental state is to be achieved and, where that state has been exceeded, what the timeframe is for that situation to be resolved.
11. My opinion on the form of objectives is consistent with the opinions of the reporting officers and the Environment Court in *Ngati Kahungunu Iwi Inc v Hawke's Bay Regional Council*.
12. In Appendix 2 of my evidence I include a table that summarises my analysis of the objectives of the Plan. This table highlights that only 6 of the 59 objectives describe a measurable end state, with a further 13 objectives that conditionally describe an end state. I have identified these as conditional because whether they can be measured depends on whether the regional council has current state data available to act as a reference point. For example, Objective O23 partially describes an end state (water quality is maintained) but whether that outcome can be measured depends on whether the Council has sufficient data on the current state of water quality throughout the region to be able to determine this. If that data isn't available, then the maintenance component of Objective O23 would be categorised as describing a general end state.
13. The enhancement component of Objective O23 has been categorised as describing a trajectory of change. This is because there is no end state that water quality is to be enhanced to.

14. 37 of the 59 Objectives in the Plan describe a trajectory of change or a management principle rather than an end state. Those types of objectives are generally not useful for decision-making around if or when resource management issues will be fully addressed. It is also extremely difficult to assess how appropriate those types of objectives are in achieving the purpose of the Act, both individually and collectively, because achieving the objectives does not necessarily translate into an environmental state and resource use pattern that reflects the fundamental requirements of sustainable management.
15. The consequence of objectives that do not describe a desired end state is that it is difficult to evaluate the effectiveness and efficiency of the policies and methods under s32. At paras 34 to 38 I give an example of Objective O28, which refers to wetlands being restored but does not include an end state description. The underlying policies (P31 and P37) are left 'floating' because while they describe attributes to consider in relation to wetlands, there is no reference point for those attributes either in Objective O28 or the policies themselves. Policy P31 for example refers to effects on attributes being 'minimised' and P37 lists values associated with wetlands but not the state in which wetlands will provide for those values.
16. In my opinion, the objectives need to be comprehensively re-drafted to describe end state outcomes, and many of the policies need to be refined to describe *how* the objectives will be achieved.

EFFECT OF OBJECTIVES AND POLICIES ON MANAGEMENT OF CUMMULATIVE EFFECTS

17. At para 43 of my evidence, I touch on how the lack of end state objectives and directive policies impacts on resource consent decision-making and the management of cumulative effects. The current suite of objectives do not give decision-makers on resource consent applications certainty as to what outcome is necessary for individual activities in order to achieve an integrated management outcomes at the catchment or regional scale. In a s32 sense, there is significant risk that the policy and rule framework underpinning the objective will not be effective.
18. At para 227, I discuss how cumulative effects from activities within and beyond sites of significance to mana whenua in Schedule C have the potential to cause or continue contributing to significant adverse effects on those sites. Because the objectives do not describe an end state, and the policies and rules of the Plan do not provide decision-makers on individual applications with direction on how to achieve the objective, there is

a high probability that multiple, disconnected decisions will frustrate the achievement of the objective.

19. There is also a flow-on effect of the objective and policy imprecision on permitted activity rules in the Plan (which work in conjunction with decisions on resource consents). At paras 265 to 266 I discuss how permitted activity rules can be used to manage activities in a manner that collectively contributes to an outcome being achieved. Because the Plan does not have clear outcome based objectives, it is challenging to determine whether the permitted activities are effective in collectively achieving the objectives. In relation to the management of Ngā Taonga Nui a Kiwa and sites of significance listed in Schedule C, it is my opinion that the permitted activities in the Plan that relate to discharges to land and water do not work together to achieve the objectives.

SITES OF SIGNIFICANCE TO MANA WHENUA

20. At paras 229 to 231 of my evidence I summarise the relationship between the objectives of the Plan, in particular Objectives O16 and O33. In summary, O16 relates to the *relationship* of mana whenua with Nga Taonga Nui a Kiwa and O33 relates to the protection and enhancement of the sites themselves. Importantly, O33 applies to both Nga Taonga Nui a Kiwa and sites listed in Schedule C. Both are sites of significance to mana whenua, the difference between them being primarily one of spatial extent.

21. My interpretation of the relationship between these objectives is important because it has a significant bearing on how the policies and methods perform under a s32 evaluation. The Plan provisions currently provide a higher degree of management intervention over sites in Schedule C than they do over Nga Taonga Nui a Kiwa, notwithstanding the values, relationships and effect-generating activities are comparable. In my opinion, the Plan provisions will not be effective in protecting Nga Taonga Nui a Kiwa especially, but also Schedule C sites. The provisions may be effective to some degree around enhancement of those sites where non-regulatory enhancement methods are implemented (such as iwi-led enhancement projects).

22. I have recommended that some relatively significant amendments are necessary to the Plan to ensure that the policies, rules and other methods will be effective in achieving the objectives that relate to sites of significance to mana whenua. Many of these changes relate to provisions that will be considered at future topic hearings so my draft amended provisions are not comprehensive at this stage.

INTEGRATED MANAGEMENT – SITES OF SIGNIFICANCE TO MANA WHENUA AND OTHER KEY OUTCOMES

23. At paras 240 to 242 I discuss the relationship between the objectives and policies of the Plan that relate to sites of significance to mana whenua and the other objectives and policies that relate to the protection, safeguarding, restoring and enhancing key natural resources. In my opinion, there is an inherent relationship between all of these resources and relationships, and the Plan should be designed to achieve integrated management of them all. However the 'interim' approach adopted by the Council has left policy and method gaps in the Plan such that consistent outcomes and integrated management is unlikely to occur.
24. Table 1 of my evidence includes a very brief snapshot of objectives and policies that have directive outcomes (preserve, protect, restore, etc) on a range of attributes and resources that are contributory to the relationships and values associated with sites of significance to mana whenua. The purpose of the table is to emphasise the disconnect between related objectives across the Plan, and the policies and methods that implement them. This disconnect is set out at paras 217 to 219 of my evidence.
25. To provide a brief example of the disconnect between rules in the Plan and the outcomes in the objectives I have just discussed, Rules R82, R83 and R85 relate to common discharges to land (fertiliser, collected animal effluent and compost):
- a. The discharge of fertiliser (R82) is a permitted activity and there is no standard or condition relating to nutrient application/loading rates.
 - b. The discharge of collected animal effluent is a controlled activity (R83) with the matters of control limited to the management of that particular discharge (including nutrient loading rates) but no loading rate conditions in the rule.
 - c. The discharge of compost to land is a permitted activity (R85) provided the nitrogen loading rate from all sources is less than 150kg N/ha/year.
26. As the Council has established, the contribution of nutrients from non-point source discharges from primary production activities is a significant contributor to the degraded state of water bodies, ecosystem health, mahinga kai, indigenous species and their habitat, and sites of significance in Schedules B and C (see paras 23, 209, 231, 247 of my evidence for references). However the management response in the Plan rules provides for no certainty as to what quantity of nutrients will be contributed across the

region, within particular catchments or from individual properties and therefore whether those discharges will contribute to the objectives being achieved. Those effects cannot be controlled solely by decisions on resource consent applications, and any decision-maker on a resource consent application has no way of knowing how much nutrient other activities are contributing to the catchment.

27. In my opinion, this approach cannot be regarded as being effective in achieving the suite of objectives, particularly those directive objectives that require the status quo to be maintained as a minimum outcome. The response is that a more structured approach, as indicated in Rangitāne's submission and further submission is necessary. This approach can then be refined, if necessary, through the Whaitua Committee process.

DRAFT PLAN PROVISION CHANGES

28. I have appended some tracked changes plan provisions to my evidence which, in part, respond to the issues I have identified in my evidence and to give effect to recommendations I have made. As previously mentioned, I will add to those provisions as the hearings progress.

