

**Before the Environment Court
At Wellington**

**I Mua I te Kōti Taiao
Te Whanganui-a-Tara
ENV-2021-WGN-**

Under the Resource Management Act 1991 (**RMA**)

In the matter of an appeal under clause 14 of the First Schedule of the RMA

Between **The Māori Trustee**
Appellant

And **Hawke's Bay Regional Council**
Respondent

**Notice of appeal against decision on Proposed Plan Change 7 to the
Hawke's Bay Regional Resource Management Plan - outstanding water
bodies**

Date: 6 August 2021



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To The Registrar
 Environment Court
 Auckland

The **Māori Trustee** appeals against parts of the decision of the Hawke's Bay Regional Council (**Council**) in respect of Proposed Plan Change 7 to the Hawke's Bay Regional Resource Management Plan (**PC7**).

The Māori Trustee's interest

- 1 Poukawa 13B is an area of Māori Freehold Land situated at Te Hauke, 12 kilometres south of Hastings and comprising approximately 522 hectares. It includes most of Lake Poukawa. Currently the Poukawa 13B land (372 ha) is leased to Brownrigg Agriculture Limited.

- 2 The land is subject to an Ahu Whenua Trust known as the Poukawa 13B Trust, constituted under the Te Ture Whenua Maori Act 1993 (**the Act**). Under this Trust the land is vested in the Māori Trustee as Responsible Trustee. The Māori Trustee is appointed by the Māori Land Court under the Act. Te Tumu Paeroa is the organisation that supports the Māori Trustee to carry out her duties, functions and responsibilities. There are five advisory trustees and 1634 owners in the Poukawa 13B Trust.

- 3 Lake Poukawa is a taonga of outstanding value and significance of the local hapū, Ngai Te Rangikoianake, and iwi, Ngai Te Whatuiāpiti and Ngati Kahungunu. The eponymous tipuna, Te Hapuku, the rangatira, who the Crown engaged with at the time of the local land purchases, decreed that the Lake should never be drained. The history and unique characteristics of the Lake, including its traditional values and uses is well known to the owners of Poukawa 13B Trust, being descendants of Te Hāpuka and members of the local hapū.

- 4 The significance of Lake Poukawa has been recognised by the Environment Court previously:

... we unreservedly accept his [Mr Hapuku's] uncontested evidence to demonstrate that the people of Te Hauke (and MTB [Te Tumu Paeroa]) have a very significant relationship to, and related kaitiakitanga responsibility

for, Poukawa Waiū. We are directed to recognise and provide for that relationship and have particular regard to that responsibility in determining the appeal (ss 6(e), 7(a), RMA). Also bearing on these matters are NPSFM Objective D1 and related Policy D1¹.

As recorded in the First Decision, we find the evidence of Mr Hapuku to strongly demonstrate the very significant relationship that the people of Te Hauke (and MTB [Te Tumu Paeroa]) have to Poukawa Waiū, and their related kaitiakitanga responsibilities².

- 5 The Poukawa 13B Trust, as owner of most of the lake bed, have advocated for the Lake for some time (along with relevant hapū and iwi entities) for it to be protected from uses that will affect its values (both ecological and cultural).

The decision

- 6 The Māori Trustee made a submission on PC7 - Outstanding Water Bodies (submission #35).
- 7 The Council made the decision on PC7 in June 2021 (**Decision**). The Council publicly notified its Decision on 26 June 2021 and the Māori Trustee received notice that the Decision would be available on the 26th by way of email on 25 June 2021.
- 8 The parts of the Decision appealed are:
- 8.1 The decision to remove Lake Poukawa from Table 2 in Schedule 25.
- 8.2 The policies that do not protect the significant values and outstanding values of Lake Poukawa. This includes Policies LWB3A and LW3B (which should also provide for

¹ *Hawke's Bay Fish & Game Council v Hawke's Bay Regional Council*, [2017] NZEnvC 187, at [119]

² *Hawke's Bay Fish & Game Council v Hawke's Bay Regional Council*, [2018] NZEnvC 192, at [31]

reasonable existing uses that are not adversely affecting the values of Lake Poukawa).

- 9 The Māori Trustee is not a trade competitor for the purposes of section 308D of the RMA.

Reasons for appeal

- 10 The reasons for the appeal are as follows. The Decision:
- 10.1 Will not promote the sustainable management of Lake Poukawa and will not achieve the purpose of the RMA.
 - 10.2 Is contrary to Part 2 of the RMA.
 - 10.3 Will not give effect to the National Policy Statement for Freshwater Management 2020.
 - 10.4 Does not represent the most appropriate way of exercising the Council functions, having regard to the efficiency and effectiveness of other reasonably practicable options, and are therefore, not appropriate in terms of section 32 and other provisions of the RMA.
- 11 In addition to the general reasons raised above, the Māori Trustee also appeals the Decision for the specific reasons below:
- 11.1 As notified, Plan Change 7 included Lake Poukawa as an Outstanding Water Body in Table 2 of Schedule 25. The outstanding value(s) identified for the Lake were ‘cultural, spiritual’ and its significant values were listed as ‘indigenous fish, bird and plant populations, hydrological, social and cultural activities and mahinga kai’. Lake Poukawa should have remained listed in Schedule 25.
 - 11.2 The Summary of Values prepared by the Council for Plan Change 7 (dated August 2020) for Lake Poukawa and

Pekapeka Swamp stated in Appendix 3, in relation to Lake Poukawa and Pekapeka Swamp – Selecting a List of outstanding water bodies in Hawke’s Bay:

Lake Poukawa is important to Heretaunga Tamatea, lying at the heart of their spiritual and cultural wellbeing. Prior to draining, Lake Poukawa was a large lake and raupo wetland covering between 3,000 and 4,000 acres, depending on seasonal waters.

The lake was an important food source, and was particularly known for tuna (eels). There were a number of significant battles in the vicinity. Information reviewed indicates the water body contains the following key values:

- Wāhi Tapu, Wāhi taonga
- Battle site
- Pa, kāinga
- Mahinga kai, Pa tuna.

The local expert panel found that Lake Poukawa and Pekapeka Swamp included known outstanding cultural and spiritual values, specifically for wairuatanga, rangatiratanga, mahinga kai, whakapapa, and spiritual condition. A

At the time of writing, iwi authorities had not provided any comment specific to the Putere Lakes.

11.3 This evidence was disregarded when the Decision concluded 'we do not have sufficient evidence that Lake Poukawa and the Pekapeka swamp meet the screening tests for having outstanding cultural or spiritual values'.

11.4 The submission on behalf of the Māori Trustee has been disregarded as while it was included in the List of Submitters in the Decision (Table 1), it is not otherwise mentioned in the Decision. Its submission supported the listing of the outstanding water bodies, as they were in the notified version of PC7. This included Lake Poukawa.

11.5 The submission by Brownrigg Agriculture has been misconstrued in the Decision in relation to Lake Poukawa. It records that 'Brownrigg Agriculture opposed these water bodies being found to have outstanding values'. The

Brownrigg Agriculture submission contains a specific section on Lake Poukawa which supports listing the Lake, but sought some clarification of the wording in the Schedule:

Lake Poukawa is included as item 6 in Schedule 25 Table 2 in Part 2 of PC7. BA has no issue with the identification of Lake Poukawa as being outstanding or 'quite out of the ordinary on a regional basis' in Hawke's Bay. In fact, in the first iteration of the HB RRMP promulgated in the mid-1990s Lake Poukawa was identified as one of the most important wetlands in the region due to its peat soil surrounds and its native bird and fish habitat.

However, certain parts of the Table2 entry for Lake Poukawa are uncertain or incorrect...

- 11.6 Procedural issues relating to new criteria being applied in the Decision which were not part of the consultation or notification phases for PC7.
- 11.7 Objective LW1 includes a requirement for protecting the outstanding and significant values of water bodies identified in Schedule 25. The policies should give effect to this objective. Some of the policies do not as they protect the outstanding values of the outstanding water bodies, but do not protect the significant values.

Relief sought

- 12 The following relief is sought by the Māori Trustee:
 - 12.1 Lake Poukawa is reinstated into Table 2 in Schedule 25.
 - 12.2 The policies that do not protect the significant values of outstanding water bodies (ie, Lake Poukawa) be amended so they protect outstanding values and significant values of the Lake.
 - 12.3 That the policies provide for reasonable existing uses that are not adversely affecting the values of Lake Poukawa.

12.4 Such further, or other, relief or consequential, or other, amendments to these or other provisions considered appropriate and necessary to address the Commission's concerns.

12.5 Costs in respect of this appeal.

Documents attached

13 The Māori Trustee attaches the following documents to this notice:

13.1 A copy of its submission on Plan Change 7.

13.2 A copy of the Decision (a copy of this document is not included in copies being served on the parties listed in Appendix 3, but a copy may be obtained on request from the Appellant).

13.3 A list of the names and addresses of persons to be served with a copy of this notice.

Date: 6 August 2021



.....
Kerry M Anderson/M J Dicken
Counsel for the Māori Trustee

This document is filed by Kerry Anderson of DLA Piper, solicitor for Te Tumu Paeroa on behalf of the Māori Trustee.

The address for service on the Māori Trustee is at:

DLA Piper New Zealand
Leve 4, 20 Customhouse Quay
Wellington 6140

Documents for service on the Māori Trustee may be:

- left at the above address for service, or
- posted to the solicitor at PO Box 2791, Wellington 6140.

Please direct enquiries to:

Kerry Anderson

Tel +64 4 474 3255

Email kerry.anderson@dlapiper.com

Advice to recipients of copy of notice of appeal

How to become party to proceedings

You may be a party to the appeal if you made a submission or a further submission on the matter of this appeal.

To become a party to the appeal, you must,—

- within 15 working days after the period for lodging a notice of appeal ends, lodge a notice of your wish to be a party to the proceedings (in [form 33](#)) with the Environment Court and serve copies of your notice on the relevant local authority and the appellant; and
- within 20 working days after the period for lodging a notice of appeal ends, serve copies of your notice on all other parties.

Your right to be a party to the proceedings in the court may be limited by the trade competition provisions in [section 274\(1\)](#) and [Part 11A](#) of the Resource Management Act 1991.

You may apply to the Environment Court under [section 281](#) of the Resource Management Act 1991 for a waiver of the above timing or service requirements (*see* [form 38](#)).

How to obtain copies of documents relating to appeal

The copy of this notice served on you does not have attached a copy of the appellant's submission and (or or) the decision (or part of the decision) appealed. These documents may be obtained, on request, from the appellant.

Advice

If you have any questions about this notice, contact the Environment Court in Auckland, Wellington, or Christchurch.

Appendix 1 - The Māori Trustee's submission on Plan Change 7

Appendix 2 - A copy of the Decision

A copy of this document is not included in copies being served on the parties listed in Appendix 3, but a copy may be obtained on request from the Appellant

Appendix 3 - List of parties to be served with a copy of this notice of appeal

Sub No.	Party	Address
1	Bayliss, Kathryn	kall@xtra.co.nz
2	Booster Wine Group	shane.speakman@boosterwinegroup.nz Shane Speakman, 150 Ugbrooke Road, RD 4, Awatere Valley, Marlborough
3	Brownrigg Agriculture Group Ltd	bridget@brownrigg.co.nz Bridget Margerison 140 Pukekura Settlement Road, RD 11, Hastings 4178
4	Central Hawke's Bay District Council	info@chbdc.govt.nz Monique Davidson
5	Department of Conservation	napier@doc.govt.nz Jenny Nelson-Smith
6	Donovan, Bryce	l.kling@xtra.co.nz Brylee Farms Ltd
7	Elderkamp, Dan	eldernz@farmside.co.nz 387 Maharakeke Road, RD 1, Waipukurau 4281
8	Ernslaw One Limited	james.sinclair@ernslaw.co.nz PO Box 751, Gisborne
9	Federated Farmers of New Zealand	rdasent@fedfarm.org.nz Rhea Dasent
10	Forest & Bird	t.kay@forestandbird.org.nz Tom Kay
11	Forest Management (NZ) Ltd	mark.roper@fmnz.co.nz Mark Roper
12	Genesis Energy Limited	Alice.Lin@genesisenergy.co.nz Alice Lin
13	Hawke's Bay Fish and Game Council	pwilson@fishandgame.org.nz Peter Wilson
14	Hawke's Bay Forestry Group	kdolman@novapsi.net.nz Keith Dolman
15	Hawke's Bay Regional Council	belinda@hbrc.govt.nz Belinda Harper, Senior Policy Planner Private Bag 6006, Napier 4142 P: 06 835 9200

16	Hawkes Bay Winegrowers' Association Incorporated	Xan.harding@xtra.co.nz Xan Harding
17	Hawke's Bay Airport Limited	anita.anderson@mitchelldaysh.co.nz
18	Hineuru Iwi Trust	info@ngatihineuru.com
19	Horticulture NZ	charlotte@viewconsult.co.nz Charlotte Drury
20	Jet Boating NZ	ecclesb@xtra.co.nz Brian Eccles
21	Jones, Audrey	deakinjones@gmail.com Audrey Jones
22	Maungaharuru-Tangitū Trust	info@tangoio.maori.nz Tania Hopmans
23	Napier City Council	kima@napier.govt.nz Paulina Wilhelm
24	New Zealand Forest Management Limited	jackie@nzfm.co.nz Jackie Egan
25	Ngamatea Farming Company Ltd	nathan@ngamatea.co.nz Nathan Apatu
26	Te Taiwhenua o Heretaunga, Ngāti Kahungunu Iwi Incorporated, Te Manaaki Taiao, Te Rūnanganui o Heretaunga	Marei.Apatu@ttoh.iwi.nz Marei Apatu ngaio@kahungunu.iwi.nz Ngaio Tiuka
27	Wairoa Taiwhenua Incorporated	wairoa.taiwhenua@xtra.co.nz Nigel How
28	Owhaoko C Trust	owhaoko@xtra.co.nz ; peter.mcgregor01@gmail.com Peter McGregor
29	Pain, Gerard	402 Hinerua Road, R D 1, Ongaonga, 4278
30	Palmer, Elizabeth (Iwitea Marae)	lizpaama@hotmail.com Elizabeth Palmer
31	Pan Pac Forest Limited – Forests Division	Jo.field@panpac.co.nz Jo Field

32	Pernod Ricard Winemakers New Zealand Limited	Ezekiel.Hudspith@dentons.com Ezekiel Hudspith nicky.mcindoe@dentons.com Nicky McIndoe
33	Ravensdown Limited	anna.wilkes@ravensdown.co.nz Anna Wilkes
34	Rayonier Matariki	kelsey.tills@rayonier.com Kelsey Tills
35	Raihania, Wirihana	Kerry.Anderson@dlapiper.com ; Matthew.Dicken@dlapiper.com ; Wirihana.Raihana@tetumupaeroa.co.nz
36	Timberlands Limited	Colin.Maunder@tll.co.nz
37	Transpower New Zealand Limited	Environment.Policy@transpower.co.nz
38	Trust Power	Shelby-McFarlane-Hill@trustpower.co.nz
39	Tully, Adrienne	purplesage@xtra.co.nz Adrienne Tully
40	Waikaremoana Tribal Authority	pearl@wta.iwi.nz Pearl Hiraka
41	Z Energy Limited, BP Oil New Zealand Limited and Mobil Oil New Zealand Limited (the Oil Companies)	markl@4sight.co.nz Mark Laurenson
42	Silver Fern Farms Limited	ethan.glover@mitchelldaysh.co.nz Mitchell Daysh Limited PO Box 489 Dunedin 9054