

Form 7

*(Notice of appeal to Environment Court against decision
on proposed policy statement or plan)*

IN THE MATTER OF **The Resource Management Act, 1991**

AND IN THE MATTER OF **Proposed Plan Change 7 (PPC7) to the Hawke's Bay
Regional Policy Statement**

AN APPEAL UNDER **Clause 14 of the First Schedule to the Act**

FROM **Te Taiwhenua o Heretaunga, Te Runanganui o
Heretaunga, Te Manaaki Taiao o Heretaunga and
Ngāti Kahungunu Iwi Incorporated**

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TO: The Registrar
Environment Court
P O Box 7147
Wellesley Street
AUCKLAND
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1. APPELLANTS:

Te Taiwhenua o Heretaunga (TToH), Te Runanganui o Heretaunga, Te Manaaki Taiao o Heretaunga and Ngāti Kahungunu Iwi Incorporated (NKII).

2. AUTHORITY WHICH MADE THE DECISIONS SUBJECT TO THIS APPEAL:

Independent Hearings Panel
Hawke's Bay Regional Council
Private Bag 6006
Napier
4142

3. STATEMENT:

We are not trade competitors for the purposes of section 308D of the Resource Management Act. We made submissions to Proposed Plan Change 7 to the Hawke's Bay Regional Policy Statement and provided evidence to the independent hearings panel at the relevant hearings.

4. DATE OF RECEIPT OF THE DECISIONS:

We were notified via email communication from the Hawke's Bay Regional Council on Friday 26th June that the decisions on Proposed Plan Change 7 would be released the following day. We were provided with directions to a website where the decisions would be available

5. RESOURCES AFFECTED BY THE DECISIONS:

The resources affected by the decisions are specific freshwater bodies and coastal waters and estuaries within the Hawke's Bay region. In addition, other taonga associated with these. They are affected by the water resources being included in a schedule of "Outstanding Water Bodies" in the Regional Policy Statement (Schedule 25), or by being deleted or omitted from that schedule by decision. By being classified as outstanding, their qualities and values are accorded a higher level of protection than other water resources in the region.

6. DESCRIPTION OF THE SUBJECT MATTER:

- a) The decision making processes and consequent decisions reached by the Independent Hearings Panel appointed by the Hawke's Bay Regional Council in relation to Proposed Plan Change 7 (PPC7).
- b) Amendments made to provisions in the Regional Policy Statement (RPS) as part of PPC7 (publicly notified 31/08/2019), that became operative one week prior (24/08/2019). The consequences of the above in terms of natural justice due to undermining the integrity of previous agreements between HBRC and appellants to Plan Change 5, a previous plan change to the RPS.
- c) Procedural matters whereby new criteria were applied by the Independent Hearings Panel, for assessing outstanding water bodies. The criteria were not part of the consultation or notification phases for PPC7. Associated matters relating to the application of national and international assessment criteria in addition to other criteria, that then prevented regionally outstanding values and the water bodies/resources to which they apply, from being included in Schedule 25 .
- d) The use of terminology relating to freshwater and the NPSFM, and its application by definition to coastal waters, thereby creating objectives, policies and methods that are inconsistent with the RMA, 1991, the NPSFM 2020 and the NZCPS.
- e) Consequentially, the failure to apply and enable separate terminology in RPS provisions for outstanding freshwater bodies and outstanding coastal waters.
- f) The deletion from Schedule 25, of freshwater bodies or parts thereof, and of estuaries, considered by tangata whenua and others, to be regionally outstanding.

- g) The deletion of outstanding values and significant values from Schedule 25, and the failure to include by decision, other values considered to be outstanding or significant by the appellants and those they represent, or by other parties.
- h) The presumption in decision-making processes that some members of Māori communities within Hawke's Bay, do not have rights to define what values are outstanding or significant to them in relation to freshwater and coastal waters in the region.
- i) The inclusion of PPC7 provisions in Chapter 3 of the RPS, that then creates inconsistencies with other provisions and methods in the RPS, the Regional Plan and the Coastal Environment Plan.

7. RELIEF SOUGHT:

- a) A ruling on whether undue prejudice was created in amending Regional Policy Statement provisions that were part of prior Environment Court agreements and consent orders, one week after those provisions became operative.
- b) Provide a clear, succinct, and separate definition in PPC7 for those waters/features in the coastal environment classified as "outstanding" as the RMA definition of "water body" and therefore by extension "outstanding water body", only covers freshwater bodies. Make consequential changes to PPC7 to cater for this.
- c) The continued exclusion of abstractive values and land use values from being attributed outstanding value status or significant value status in regard to outstanding freshwater bodies in Schedule 25.
- d) Amend Proposed Plan Change 7 so that the following water bodies are included in Schedule 25 as outstanding:
 - The Heretaunga Plains Aquifer System;
 - The Ruataniwha Plains Aquifer System;
 - The Makaroro River from its source to the confluence with the Waipawa River;

- The Ngaruroro River below Whanawhana cableway site downstream to and including the Heretaunga Plains Aquifer recharge zone between Maraekākaho and Chesterhope Bridge;
 - Lake Poukawa and Pekapeka Swamp
 - The Waitangi Estuary.
- e) Clear separation in Schedule 25, of outstanding freshwater bodies from estuaries and coastal waters, i.e., the provision of separate tables.
- f) Retention of Appendix 2, Part 1, Table 1, and the contents in the first two columns headed “Outstanding Values” and “Descriptions”, and expand to include more content and detail on the outstanding cultural/spiritual values.
- g) Either delete “Part 1 - Outstanding Water Body Identification Screening Criteria” from PPC7, or substantially amend so that:
- one regionally outstanding value for a water body is considered sufficient for it to qualify for “outstanding water body” status within the Hawke’s Bay region and Schedule 25;
 - regionally outstanding criteria/values are not compromised by, or subservient to national or international criteria/values in terms of a water body being included in or excluded from Schedule 25;
 - the requirement to meet multiple criteria in different lists are not a prerequisite for identifying a water body as outstanding, provided that water body has one regionally outstanding value;
 - “natural character” is inclusive of “natural functions and processes”, “integrity of aquifer recharge” and “natural spring flows”.
 - the provision of evidence is not a requirement for or an impediment to ,relevant matters raised in submissions being taken into account; and
 - the content of List A and reference to List A in the cultural and spiritual (tangata whenua) section is deleted.
- h) Amend Proposed Plan Change 7 to include separate issue statements, objectives and policies for outstanding freshwater bodies, from outstanding coastal waters (e.g. estuaries, coastal wetlands and lagoons).

- i) Enable through PPC7 and its direction for regional plans, freshwater planning processes, and management of the coastal environment, the ability for iwi and hapū to be involved as “affected parties” and submitters (if they so wish) for resource consent applications and renewals where there is the potential for cultural, spiritual, and environmental values and/or iwi and hapū customary rights and interests, to be adversely affected by those activities requiring consents/permits.
- j) As a consequence, change Policies in PPC7 that restrict iwi and hapū from being consulted on new activities, and the renewal of consents/permits for existing activities.
- k) Amend the glossary definition in PPC7 for “outstanding water body” to “Are those freshwater bodies identified in a regional policy statement or regional plan as having one or more outstanding ecological, geological, hydrological, landscape, natural character, recreational or cultural/spiritual values.” Provide a separate definition for “outstanding coastal waters”. Amend the “glossary definition of “outstanding” to: “for the purposes of an outstanding freshwater body or outstanding coastal waters, means regionally conspicuous, eminent, or remarkable in Hawke’s Bay.”
- l) Provide direction in PPC7 towards regional plans for more prescriptive management and full consideration of the cumulative adverse effects of activities from land use and development, on regionally outstanding water bodies and outstanding coastal waters and on their outstanding values and significant values.
- m) Amend PPC7 so that when applied to outstanding water bodies, only the priority values in the Regional Policy Statement’s Table 2A that are inherent within the water bodies themselves, are eligible for outstanding value or significant value status. Several of the values and uses prescribed in the table and PPC7 are “catchment” values and uses and require land use, infrastructure and/or external inputs to promote or attain outstanding or significant value status.
- n) Amend Schedule 25 (decisions version) to include specific descriptions/explanations of cultural and spiritual values. Provide for additional cultural and spiritual values to be included in regional plans.
- o) Amend Objective LW1.1 to include: "protecting the outstanding and significant values and water quality of outstanding freshwater bodies identified in Schedule 25", and make consequential amendments to Policy LW1.1.

- p) Amend the Principal Reasons and Explanation for Objective LW1.1 to replace the word 'expects' with 'requires'.
- q) Amend Proposed Plan Change 7 to ensure sufficient water quantity is retained in outstanding freshwater bodies and outstanding water resources in the coastal environment so as to maintain and uphold their significant values, including fish passage.
- r) Retain and amend Policy LW1.1 cC), and LW1.1 d) to:
 "POL LW1 Problem solving approach - Catchment-based integrated management
 1. Adopt an integrated management approach to fresh water and the effects of land use and development within each catchment area, that:

- cC) Identifies any additional significant values of those outstanding freshwater bodies in Schedule 25 and assesses them taking into account the values set out in Appendix 1 of the National Policy Statement for Freshwater Management, and any other values that are determined to be significant taking into account local and/or regional circumstances.
- d) gives effect to provisions relating to outstanding freshwater bodies arising from the implementation of Policy LW1A and protects the outstanding and significant values of those outstanding freshwater bodies identified in Schedule 25, and protects the water quantity of those outstanding water bodies," and amend clause dA) to remove the words "where appropriate" and add "to the fullest extent practicable" to the end of the sentence.
- s) For Policy LW1.2, retain the operative clause bA) so that the known values inherent within outstanding freshwater bodies are recognised and provided for. Make consequential amendments to the decision version of LW1.2 bA) with appropriate renumbering, so the first sentence of clause i) reads: "Carry out an assessment which identifies any additional significant values of that outstanding freshwater body."
- t) Amend clause iA) in Policy LW1.2 to read, "Identify the spatial extent and temporal extent where relevant, of the outstanding values and significant values."
- u) In PPC7, clearly differentiate and state the differences between the catchment "primary and secondary" values and uses in RPS Table 2A, and the "outstanding values" and "significant values" of outstanding water bodies.

- v) Enable the natural character value, to include natural form, natural function and integrity of recharge, so that aquifer recharge, spring flows from aquifers that replenish streams, and the cleansing services that aquifers provide, are included as aspects of natural character. Amend the natural character definition and any related assessment criteria in PPC7 accordingly. The definitions and criteria included in PPC7 (decisions version) do not acknowledge these values.
- w) Amend Objective 11 to read as follows:
"Protection of the outstanding values and significant values of those outstanding waterbodies resources within the Coastal Environment listed in Schedule 25."
And
Amend Explanations and Reasons statements at 3.2.8A and 3.2.8B to align with the above changes, to include "outstanding coastal waters" or words of like meaning and intent. Clearly identify in a table, which policies and rules apply to the new Objective 11.
- x) Amend Policy LW1.2(bA) so that the original operative wording is retained:
"recognise and provide for outstanding freshwater bodies and their values arising from the implementation of Policy LW1A."
In addition, include the clause "and temporal extent of those values as relevant" in sub-clause iA), and amend sub-clause iii) to:
"include regional plan provisions to manage ~~new~~ activities in a manner which avoids adverse effects, including cumulative adverse effects that are more than minor, on the outstanding values and significant values of outstanding freshwater bodies.
- y) In Schedule 25 provide descriptions of the outstanding tikanga Māori values and significant values, where they are not already included. In addition provide expanded descriptions for the values associated with Ecology, Landscape, Natural Character, Recreation and Geology and for the following Māori terms:
- Hauora o te wai
 - Mana o te Wai
 - Ki Uta ki Tai
 - Mahinga kai area and Mahinga kai site
 - Whakapapa o te wai, and
 - Kōhanga ika.

- z) In Policy LW2 Problem solving approach – Prioritising values, Add Policy LW1.1 to the preliminary statement so it reads “Subject to achieving Policy LW1.1, Policy LW1.2 and Policy LW1.3:”.
- aa) Substantially amend Policies LW3A and LW3AB, and the associated Principal reason and explanation, to align with the amendments sought in our submissions.
- bb) In Policy C1, delete reference to policies contained in the section of the RPS that manages freshwater and land use (Policies LW1.2(bA)(i)(iA) and (ii)), and reinstate the part of Policy C1 as in the original proposed version of PC7, but amended to:
- change “waterbody” and “water bodies” to “coastal water” and “coastal waters”;
 - Remove the word “new” in Policies C1 and C2 so they apply to all activities, not just new activities; and
- Amend Policy C2 so that it applies to both new and existing activities, and to restricted discretionary, discretionary and non-complying activities. Make consequential amendments to the “Principal reasons and explanation” section.
- cc) Amend PPC7 with the addition of the freshwater bodies and estuaries in Table A below to Schedule 25, and include the specified outstanding values and significant values.
- dd) In PPC7, ensure both new activities and existing activities (upon consent renewal) are required to protect the quality of outstanding water bodies, and their outstanding values and significant values.
- ee) Make any consequential amendments to other parts of PPC7 to align with the relief sought above, and to assist greater coherency and integration with the remainder of the RPS and regional plans.
- ff) Where our appeal does not specifically refer to provisions in the “decisions version” of PPC7, substantially retain those provisions apart from where consequential amendments are required as per clauses bb) and ee) above.
- gg) Any other relief that the Court considers appropriate.

Table A: Outstanding Water Bodies and their outstanding and significant values

Outstanding Water Body	Outstanding Value ¹	Significant Value
Lower Ngaruroro River Whanawhana to Chesterhope Bridge	Ecology: Indigenous fish habitat Indigenous bird habitat Recreation: Jetboating Geology: Hydrology Cultural/Spiritual: Wāhi Taonga, Ki Uta ki Tai, Whakapapa o te Wai Natural character: Hydrological functions and processes, Integrity of aquifer recharge	Ecology -, Fish passage, Fish spawning Cultural/spiritual: Mahinga kai ² , Nohoanga, Tauranga waka, Hauora – cleansing, Mauri, Kōhanga ika Natural character: Aquifer recharge
Heretaunga Plains Aquifer System	Ecology: Groundwater dependent ecosystems Cultural/Spiritual: Whakapapa o te Wai, Wāhi Taonga, Waiora, Mauri Geology: Hydrological Natural character: Integrity of aquifer recharge	Cultural/spiritual: Hauora – cleansing, Mauri Natural character: Natural spring flows, water quantity, water quality
Tukituki River	Ecology - Native fish habitat; Bird habitat Cultural/Spiritual: Wāhi Taonga, Ki Uta ki Tai, Whakapapa o te Wai	Cultural/spiritual: Mahinga kai, Nohoanga, Mauri Ecology - Fish passage, Fish spawning
Ruataniwha Plains Aquifer System	Ecology – Groundwater dependent ecosystems Cultural/Spiritual: Waiora, Wāhi taonga, Mauri, Whakapapa o te Wai Geology: Hydrology	Cultural/spiritual: Ki Uta ki Tai, Hauora – cleansing, Mauri, Puna-wai Natural character: Natural spring flows
Karamu River	Cultural/Spiritual: Wāhi taonga,	Cultural Spiritual: Mahinga

¹ From a regional perspective

² Mahinga kai as a place, site or area, practice and/or use.

	Whakapapa o te Wai Geology: Hydrology Natural character: Natural spring flows	kai, Nohoanga, Puna-wai, Mauri, Tauranga waka Ecology: Fish spawning habitat
Makaroro River	Ecology: Indigenous plant habitat, Indigenous habitat Landscape: Scenic Geology: Hydrological	Cultural/spiritual: Wāhi taonga Ecology: Native fish, Fish spawning habitat
Lake Oingo, Lake Runanga,	Cultural/Spiritual: Wāhi taonga Ecology: Bird habitat	Cultural/spiritual: Mahinga kai, Nohoanga
Lake Poukawa and Pekapeka Swamp	Cultural/Spiritual: Wāhi taonga Ecology: Indigenous plants, Indigenous bird habitat	Cultural/spiritual: Mahinga kai, Kōhanga ika
Outstanding coastal waters		
Tukituki Estuary	Cultural/Spiritual: Wāhi taonga, Kōhanga ika Ecology: Fish spawning, Indigenous bird habitat	Cultural/spiritual - Mahinga mātaimai, Ecology - Fish passage, Fish spawning habitat
Ahuriri Estuary	Cultural/Spiritual - Wāhi taonga, Kōhanga ika Ecology: Indigenous bird habitat, Indigenous fish habitat, Fish spawning habitat	Cultural/spiritual: Tauranga waka Recreation: Waka ama Ecology: Fish passage, water quality
Waitangi Estuary	Cultural/Spiritual: Wāhi taonga, Kōhanga ika Ecology: Indigenous fish habitat, Indigenous bird habitat	Cultural/spiritual - Mahinga mātaimai, Ecology - Fish passage

8 REASONS FOR OUR APPEAL:

- a) The decisions as notified have resulted in PPC7 not giving effect to the National Policy Statement for Freshwater Management and the New Zealand Coastal Policy Statement, in particular their directive provisions.
- b) The decisions on PPC7 create conflict and discrepancy between regional planning documents.
- c) The decisions detract from the integration that previously existed between the operative Hawke's Bay Regional Policy Statement, the Regional Plan, and the Regional Coastal Environment Plan, and contribute to and promote inconsistencies with national policy direction.
- d) The RMA and NPS FM definitions for "water body" and by extension "water bodies" do not include coastal waters. A clear distinction between coastal waters and fresh water bodies in Schedule 25, would direct more effective management through separate objectives, policies, and methods in regional plans.
- e) There was inadequate consideration for the mana of hapū and iwi, and the Treaty principles recognised by HBRC, when deciding on water bodies and their outstanding and significant values, to be included in or omitted from Schedule 25.
- f) Adoption of the new screening criteria meant that regionally outstanding water bodies were omitted from Schedule 25, despite relevant evidence and information being on record at regional council.
- g) The new screening process "Outstanding Water Body Identification Screening Criteria was not discussed with or agreed to by tangata whenua or others who had been part of the expert panel convened by HBRC to assist with progressing PPC7.
- h) The new screening process undermines the ability for council to recognise and provide for the relationships of Māori with their lands, waters, sites, fisheries and other taonga.
- i) The decisions by the hearings panel do not provide for the active protection of Māori in the use of their lands, waters, sites, fisheries and other taonga to the fullest extent practicable.

- j) Decisions on PPC7 have deleted significant values from Schedule 25, while another part of the decisions (for Objective LW1.1) requires the significant values of water bodies identified in Schedule 25 PPC7 to be protected. This leaves the protection of significant values that are not listed in Schedule 25 to another planning process, despite directive provisions in the NPSFM 2020 requiring their protection.
- k) The decisions on PPC7 did not give appropriate consideration to taking into account the principles of the Treaty of Waitangi in terms of:
- The Principle of Te Tino Rangatiratanga;
 - The Principle of Active Partnership and Consultation, and
 - The Principle of Active Protection.

SIGNED:



DATE:

3/08/21

Marei Apatu
Te Kaihautū FOR:
Te Taiwhenua o Heretaunga

SIGNED:



DATE: 3 August 2021

Chrissie Hape
Chief Executive Officer FOR:
Ngāti Kahungunu Iwi Incorporated

LIST OF ATTACHMENTS:

- A. Application for waivers and directions.
- B. List of parties to be served.
- C. A copy of our original submissions.
- D. A copy of our further submissions, with a copy of the relevant submission points either supported or opposed, to which our further submissions relate.
- E. Decisions of the Independent Hearings Panel acting under delegated authority from Hawke's Bay Regional Council.
- F. Appendices 1-2 to the Hearings Panel decisions.
- G. Appendix 3 to the Hearings Panel decisions.
- H. Proof of filing fee payment of \$600.00 into the Environment Court' bank account.

Supplied for Information purposes - Advice to recipients of copy of notice of appeal

The Hawke's Bay region has traditionally come under the jurisdiction of the Wellington Environment Court, but recently this has changed to Auckland due to the Judges' caseloads.

How to become party to proceedings

You may be a party to the appeal if you made a submission on the matter of this appeal and you lodge a notice of your wish to be a party to the proceedings (in Form 33) with the Environment Court within 30 working days after this notice was lodged with the Environment Court.

You may apply to the Environment Court under section 281 of the Resource Management Act 1991 for a waiver of the above timing requirements (see Form 38).

How to obtain copies of documents relating to this appeal

The copy of this notice served on you does not attach a copy of the appellant's submissions 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 Unit of the Department for Courts in Auckland or Wellington.

Contact details of the Environment Court for lodging documents

Documents may be lodged with the Environment Court by lodging them with the Registrar.

The Auckland address of the Environment Court is:

P O Box 7147
Wellesley Street
AUCKLAND
1010

and its telephone and fax numbers are:

Telephone: (09) 916 9091
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