

In the Environment Court
At Auckland

ENV-2021-AKL-000104
ENV-2021-AKL-000105
ENV-2021-AKL-000106

I te Kōti Taiao o Aotearoa
KiTāmaki Makaurau

Between

**TE TAIWHENUA O HERETAUNGA, TE RUNANGANUI O
HERETAUNGA, TE MANAAKI TAI AO O HERETAUNGA AND NGATI
KAHUNGUNU IWI INCORPORATED**

**ROYAL FOREST AND BIRD PROTECTION SOCIETY OF NEW
ZEALAND INCORPORATED and**

THE MĀORI TRUSTEE

Appellants

And

HAWKE'S BAY REGIONAL COUNCIL

Respondent

**EVIDENCE IN CHIEF OF ANTOINE COFFIN ON BEHALF OF HAWKE'S BAY REGIONAL
COUNCIL**

Spiritual and Cultural Values

11 August 2023

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1. INTRODUCTION

1.1 My full name is Antoine Coffin and I am a consultant working on behalf of the Hawke's Bay Regional Council (**HBRC** or **Council**) to prepare spiritual and cultural values evidence in relation to Proposed Change 7 to the Hawke's Bay Regional Resource Management Plan (**PC7**).

1.2 My professional and academic qualifications include a Certificate of Land Resource Studies from Bay of Plenty Polytechnic 1995, Te Pookaitahi Reo Rumaki from Te Waananga o Awanuiaarangi 2002, Certificate in Riparian Zone Management 2002, Certificate in Strategic Leadership Victoria University of Wellington 2003, and a Good Decision-Making Certificate with Chair Endorsement (valid to 2024). I have twenty five years' experience in Māori resource management, cultural heritage planning, museology, community engagement and facilitation.

1.3 I am currently a director and consultant of my private company Te Onewa Consultants Limited. I have co-owned and operated this company since 2013. I have worked in a number of New Zealand organisations including NZ Historic Places Trust, Auckland Regional Council, University of Auckland, Boffa Miskell, and Auckland Museum. I have most recently taken a position as Manager Spatial Planning for Bay of Plenty Regional Council.

1.4 I have experience in a diverse range of consenting, public policy, cultural advisory, and water projects. My work experience includes:

- (a) Being a member of National Policy Statement Freshwater Independent Panel to review the draft National Policy Statement for Freshwater Management (**NPS-FM**) and provide recommendations to the Minister for the Environment, 2019-2020.
- (b) Chair of the independent panel to hear and decide on HBRC's proposed PC9 (Tūtaekurī, Ahuriri, Ngaruroro, Karamū Catchments - TANK plan change)
- (c) Advisor and engagement management for Waikato Regional Council's iwi partners to identify how partners wish to be involved in the process of

- identifying outstanding fresh water bodies (**OFWB**) and significant values of OFWB, in the Waikato Region, 2020-2021.
- (d) Preparing and presenting evidence on behalf of Waikato-Tainui regarding the Waikato River as an outstanding natural feature, 2020.
 - (e) Maatauranga Maaori Technical Leader for Waikato Healthy Rivers Waiora Plan Change 1 for the 5 river Iwi, Waikato Regional Council and 26 stakeholders, incorporating iwi values, interests, and aspirations into the plan change, 2014-2017.
 - (f) Independent Commissioner
 - (i) for the Gisborne Water Plan reporting on mauri, tangata whenua values and co-management;
 - (ii) Commissioner and Chair for Plan Change 9, Water Quantity, Bay of Plenty Regional Council; and
 - (iii) Commissioner Rangitaiki River Change to Regional Policy Statement that incorporates the Treaty Settlement framework for Iwi Management Plan, 2016-2017.
 - (g) Freshwater Commissioner appointed by the Minister for the Environment to support the Chief Freshwater Commissioner. I have chaired the first of the freshwater instruments for the Kaituna River (Plan Change 5 Bay of Plenty Regional Policy Statement), 2023.
 - (h) Cultural advisor to the Waikeria Prison designation including the discussions with Iwi regarding solutions for wastewater, stormwater, and water supply, 2017 to 2023.
 - (i) Technical advisor to the Rotorua Wastewater Project Cultural Assessment Committee involving 13 iwi representatives and 2 cultural impact assessments, 2015-2019.
 - (j) Preparation of a Cultural Impact Assessment of the Plan Change 13, McKenzie District Plan. An assessment of the positive and negative effects of a proposed plan change to protect landscape values and provide for nodal development and rural residential zones. Assessment included highly significant landscapes including Lakes Tekapo and Pūkaki and Mount Cook.
 - (k) Prepared for Te Rūnanga o Ngai Tahu and McKenzie District Council, 2008

- (l) Conducting a review of all regional plans and regional policy statements in NZ relating to their response to Māori cultural matters (in freshwater) for the Ministry for the Environment, 2008.
- 1.5** In 2013, I was awarded the NZ Planning Institute’s ‘Nancy Northcroft Planning Practice Award’, the Institute’s supreme award for excellence in planning practice for project managing and writing the Ngāti Rangitihi Environmental Management Plan. I have also had a significant role in managing the content of the Raukawa Iwi Management Plan 2015 and peer reviewing the Waikato Iwi Management Plan 2013.
- 1.6** I did not participate in the preparation of PC7, Outstanding Water Bodies or the hearings.
- 1.7** My involvement in these proceedings commenced in February 2023. This has included a briefing on the issues related to outstanding water bodies, provision of the documents that supported a proposed change and evaluations undertaken by Ms Belinda Harper on each of the water bodies recommended by iwi to be included.
- 1.8** Whilst I consider myself an expert in Māori resource management issues including freshwater frameworks, I am not an expert in the traditions and kōrero of Ngāti Kahungunu and hapū associated with the waterbodies of the Hawke’s Bay rohe.
- 1.9** I confirm that I have read the Code of Conduct for Expert Witnesses contained in the Environment Court Practice Note 2023 and that I agree to comply with it. I confirm that I have considered all the material facts that I am aware of that might alter or detract from the opinions that I express, and that this evidence is within my area of expertise, except where I state that I am relying on the evidence of another person.
- 1.10** The key documents I have used, or referred to, when preparing my evidence are:

- (a) Proposed Plan Change 7 – Outstanding Waterbodies, Hawke’s Bay Regional Resource Management Plan (the notified version of the Schedule 25), 31 August 2019.¹
- (b) Plan Change 7: Regional Resource Management Plan - Section 32 Evaluation Report, 31 July 2019.²
- (c) Summary of cultural values associated with water bodies in Hawke's Bay, prepared by Belinda Harper, 14 March 2018.³
- (d) Lake Poukawa and Pekapeka Swamp – Summary of Values for Proposed Plan Change 7, August 2020.⁴
- (e) Heretaunga Aquifer – Summary of Values for Proposed Plan Change 7, August 2020.⁵
- (f) Karamu River – Summary of Values for Proposed Plan Change 7, August 2020.⁶
- (g) Ngaruroro River and Estuary – Summary of Values for Proposed Plan Change 7, August 2020.⁷
- (h) Ruataniwha Aquifer – Summary of Values for Proposed Plan Change 7, August 2020.⁸
- (i) Tukituki River and Estuary – Summary of Values for Proposed Plan Change 7, August 2020.⁹
- (j) Water Conservation Order Review: Outstanding Values: Key Features. prepared by Belinda Harper, September 2020.¹⁰
- (k) The combined evidence received during PC7 hearings, November 2020.¹¹

- 1 <https://www.hbrc.govt.nz/assets/Document-Library/Outstanding-Water-Bodies/1.-Other-supporting-information/Plan-Change-7.pdf>
- 2 <https://www.hbrc.govt.nz/assets/Document-Library/Outstanding-Water-Bodies/1.-Other-supporting-information/Section-32-Evaluation-Report.pdf>
- 3 <https://www.hbrc.govt.nz/assets/Document-Library/Outstanding-Water-Bodies/1.-Other-supporting-information/Cultural-values-summary.pdf>
- 4 <https://www.hbrc.govt.nz/assets/Document-Library/Outstanding-Water-Bodies/3.-Values-reports/Lake-Poukawa-Pekapeka-ID6-Summary-of-Values-Aug-2020-5485.pdf>
- 5 <https://www.hbrc.govt.nz/assets/Document-Library/Outstanding-Water-Bodies/3.-Values-reports/Heretaunga-Aquifer-ID2-Summary-of-Values-Aug-2020-5482.pdf>
- 6 <https://www.hbrc.govt.nz/assets/Document-Library/Outstanding-Water-Bodies/3.-Values-reports/Karamu-River-ID3-Summary-of-Values-Aug-2020-5480.pdf>
- 7 <https://www.hbrc.govt.nz/assets/Document-Library/Outstanding-Water-Bodies/3.-Values-reports/Ngaruroro-River-ID18-Summary-of-Values-Aug-2020-5497.pdf>
- 8 <https://www.hbrc.govt.nz/assets/Document-Library/Outstanding-Water-Bodies/3.-Values-reports/Ruataniwha-Aquifer-ID25-Summary-of-Values-Aug-2020-5504.pdf>
- 9 <https://www.hbrc.govt.nz/assets/Document-Library/Outstanding-Water-Bodies/3.-Values-reports/Tukituki-River-ID31-Summary-of-Values-Aug-2020-5510.pdf>
- 10 <https://www.hbrc.govt.nz/assets/Document-Library/Outstanding-Water-Bodies/CEF-OFWB-Project-WCO-Review.pdf>
- 11 <https://www.hbrc.govt.nz/assets/Document-Library/Outstanding-Water-Bodies/Combined-Evidence.pdf>

- (l) Decision Report of the Independent Hearing Panel Proposed Plan Change 7, June 2021, including Appendix 1: Decisions Version of Proposed Plan Change 7.¹²
- (m) The appeals of:
 - (i) Te Taiwhenua o Heretaunga, Te Runanganui o Heretaunga, Te Manaaki Taiao o Heretaunga and Ngāti Kahungunu Iwi Incorporated (**TToH et al.**)¹³;
 - (ii) Royal Forest and Bird Protection Society of New Zealand Incorporated (**Forest and Bird**)¹⁴; and
 - (iii) Te Tumu Paeroa – the Māori Trustee¹⁵.
- (n) Evidence of Mr Owen Jerry Hapuku regarding the cultural significance of Lake Poukawa, 26 October 2021.
- (o) The Council’s preferred version of the provisions filed with the Court on 13 July 2023.

1.11 I have reviewed the final draft evidence of the following experts filed alongside this spiritual and cultural evidence for the Council:

- (a) Dr Andy Hicks, evidence in chief (ecology), dated 11 August 2023;
- (b) Dr Greg Ryder, evidence in chief (peer review), dated 11 August 2023;
- (c) Belinda Harper, evidence in chief (planning), dated 11 August 2023;
- (d) Rob Greenaway, evidence in chief (recreation), dated 11 August 2023; and
- (e) Jens Rekker, evidence in chief (geology), dated 11 August 2023.

¹² www.hbrc.govt.nz/assets/Document-Library/Outstanding-Water-Bodies/Decision-of-the-Independent-Hearing-Panel-PC7.pdf

¹³ Appeal of Te Taiwhenua o Heretaunga, Te Runanganui o Heretaunga, Te Manaaki Taiao o Heretaunga and Ngāti Kahungunu Iwi Incorporated to the Proposed Plan Change 7 to the Hawke’s Bay Regional Policy Statement, 3 August 2021. <https://www.hbrc.govt.nz/assets/Uploads/PPC7-Notice-of-appeal-by-Te-Taiwhenua-o-Heretaunga-and-Ngati-Kahungunu-Iwi-Incorporated.pdf>

¹⁴ Appeal of Royal Forest and Bird Protection Society of New Zealand Incorporated to the Proposed Plan Change 7 to the Hawke’s Bay Regional Policy Statement, 5 August 2021. <https://www.hbrc.govt.nz/assets/Uploads/Notice-of-Appeal-HBRC-PC7-Forest-Bird-FINAL.PDF>

¹⁵ Appeal of The Māori Trustee to the Proposed Plan Change 7 to the Hawke’s Bay Regional Policy Statement, 6 August 2021. <https://www.hbrc.govt.nz/assets/Uploads/20210806-Notice-of-appeal-on-HBRC-PC7-on-behalf-of-The-Maori-Trustee.pdf>

Site visits

1.12 I visited the Lower Ngaruroro River & Waitangi Estuary, Heretaunga Aquifer, Tukituki River & Estuary, Karamu River, Lake Poukawa and Pekapeka Swamp by helicopter on 25 June 2021 and the Lower Ngaruroro River, Waitangi Estuary, Karamu River by vehicle on the 7 June 2021 and 25 June 2021. I visited the Lower Ngaruroro River & Waitangi Estuary, Tukituki River & Estuary, Karamū River again on 8 March 2022.

2. SCOPE OF EVIDENCE

2.1 My evidence addresses the following matters:

- (a) PC7 background, to the extent it is relevant to my evidence;
- (b) The decision versions of the PC7 Screening Criteria and my recommended updates to it;
- (c) General comments on the methodology; and
- (d) The relief sought in the appeal of TToH et al. where they seek:
 - (i) amendments to the Outstanding Water Body Identification Screening Criteria (PC7 Schedule 25) so that:
 - the screening criteria set out in the cultural and spiritual (tangata whenua) value set are deleted
 - (ii) To reinstate into Schedule 25 the Lower Ngaruroro River for the following outstanding values:
 - Cultural/Spiritual: Wāhi Taonga, Ki Uta ki Tai, Whakapapa o te Wai.
 - (iii) To reinstate into Schedule 25 the Waitangi Estuary for the following outstanding values:
 - Cultural/Spiritual: Wāhi taonga, Kōhanga ika.
 - (iv) To reinstate into Schedule 25 the Heretaunga Aquifer for the following outstanding values:
 - Cultural and Spiritual Values: Whakapapa o te Wai, Wāhi Taonga, Waiora, Mauri.

- (v) To include the entire Tukituki River into Schedule 25 for the following outstanding values:
 - Cultural/Spiritual: Wāhi Taonga, Ki Uta ki Tai, Whakapapa o te Wai.
 - (vi) To include the Tukituki Estuary into Schedule 25 for the following outstanding values:
 - Cultural/Spiritual: Wāhi Taonga, Kōhanga ika.
 - (vii) To reinstate into Schedule 25 the Ruataniwha Aquifer for the following outstanding values:
 - Cultural and Spiritual Values: Waiora, Wāhi taonga, Mauri, Whakapapa o te Wai
 - (viii) To reinstate into Schedule 25 the Karamū River for the following outstanding values:
 - Cultural/Spiritual: Wāhi Taonga, Whakapapa o te Wai.
 - (ix) To reinstate into Schedule 25 the Lake Poukawa and Pekapeka Swamp for the following outstanding values:
 - Cultural and Spiritual Values.
 - (x) To include in Schedule 25 the Makaroro River for the following significant values:
 - Cultural/spiritual: wāhi taonga
 - (xi) In Schedule 25 provide descriptions:
 - of the outstanding tikanga Māori values, and
 - Hauora o te wai
 - Mana o te Wai
 - Ki Uta ki Tai
 - Mahinga kai area and Mahinga kai site
 - Whakapapa o te wai,
 - Kōhanga ika.
- (e) The relief sought in the appeal of The Māori Trustee where they seek:
- (i) To reinstate into Schedule 25 the Lake Poukawa and Pekapeka Swamp for the following outstanding values:
 - Cultural and Spiritual Values.

2.2 I note that the appeal of TToH et al. seeks to include Lake Runanga and Lake Oingo in Schedule 25 for outstanding Cultural/spiritual: wāhi Taonga values. I understand that because these lakes were not included in the list of outstanding waterbodies in the notified PC7, and no submissions were made on them, these lakes are out of scope for inclusion in PC7 and so I have not addressed them in this evidence.

3. EXECUTIVE SUMMARY

3.1 The key conclusions reached in my evidence are that:

(a) Schedule 25 of PC7 is appropriate for the purposes intended by the HBRC in relation to identifying outstanding water bodies in the Region for cultural and spiritual values, subject to several recommendations which I have made and which are included in the Council's 13 July 2023 preferred version of PC7, in particular to:

(i) Amend criteria a) in List A for cultural and spiritual with "The features are acknowledged as having conspicuous, eminent, and/or remarkable cultural and spiritual values in the context of the Hawke's Bay Region."

(ii) Amend criteria b) in List A with "The features are outstanding in accordance with te ao Māori values, mātauranga Māori and tikanga by descendant groups closely associated with the water body."

(iii) Retain criteria c) in List A, "Evidence is provided in support of outstanding features."

(b) Applying the criteria set out in the decisions version of PC7, it is my opinion the Lower Ngaruroro River & Waitangi Estuary, Heretaunga Aquifer, Tukituki River above SH50, Ruataniwha Aquifer, Karamū River and Makaroro River cannot at this stage be considered outstanding for cultural and spiritual values as requested by TToH et al. particularly given that limited evidence has been provided to support this request.

- (c) Applying the criteria set out in the decisions version of PC7, it is my opinion that Lake Poukawa and Pekapeka Swamp are outstanding for cultural and spiritual values as requested by the Māori Trustee and TToH et al. based on the additional evidence and information that the Māori Trustee has provided in support of this request.

4. BACKGROUND TO PC7

- 4.1** PC7 is a change to the Hawke’s Bay Regional Resource Management Plan (**RRMP**) to include a list of the region’s outstanding water bodies, together with a framework which prescribes a high level of protection for these water bodies in future planning. The list of outstanding waterbodies in Schedule 25 of the decisions version of PC7 was identified by the PC7 Independent Hearing Panel (**IHP**). The PC7 IHP considered the definition of ‘outstanding’, the Screening Criteria, information set out in submissions, as well as information provided as part of expert and lay evidence, to identify water bodies that qualified as outstanding.
- 4.2** PC7 limits outstanding values to cultural and spiritual, recreation, landscape, geology, natural character and ecology values. PC7 requires these values to be outstanding in a regional context.
- 4.3** An outstanding water body in PC7 is one that is truly exceptional or stands out from the rest. The definitions of ‘outstanding’ and ‘outstanding water body’ in the decisions version of PC7 are:

***Outstanding:** for the purposes of an outstanding water body: outstanding means conspicuous, eminent, and/or remarkable in the context of the Hawke’s Bay Region.*

***Outstanding water body** means freshwater bodies and estuaries, or parts thereof, identified in Schedule 25 that have one or more outstanding cultural, spiritual, recreation, landscape, geology, natural character or ecology value(s).*

4.4 It is my understanding that these two definitions are the subject of two appeal points: whether 'outstanding water body' has relevance to coastal waters; and whether the definition of outstanding can include "regionally conspicuous, eminent, or remarkable in Hawke's Bay."¹⁶

4.5 Additional background information on PC7 is provided in the evidence of Ms Belinda Harper.

5. PC7 SCREENING CRITERIA – CULTURAL AND SPIRITUAL (TANGATA WHENUA)

5.1 TToH et al. have requested the screening criteria in the decisions version of Schedule 25 in PC7 be deleted or amended as per the requests in set paragraph 7(g) of their appeal. With respect to the cultural and spiritual value set, TToH has requested that the content of List A be deleted. I have made my comments below in this context.

5.2 The cultural and spiritual screening criteria in the decisions version of Schedule 25, PC7 reads:

Water body provides outstanding cultural and spiritual values where it meets all matters in List A.

List A

a) The features are of outstanding value to wider iwi and hapu groups of the region.

b) The features are acknowledged as outstanding, by the descendant groups most closely associated with the water body.

c) Evidence is provided in support of outstanding features.

5.3 I do not recommend that List A of the cultural and spiritual value set be deleted as sought by the appellant. Instead, I have recommended that the criteria for cultural and spiritual values in the decisions version of PC7 be amended. Specifically, I have recommended that List A subclauses a) and b) are amended. My recommended amendments are set out in Table 1.

¹⁶ Appeal of TToH et al., above n 13, at [7(k)].

Table 1: Decision Version of Schedule 25 Cultural and Spiritual value screening criteria and my recommended changes	
Decision Version	Recommended changes
a) The features are of outstanding value to wider iwi and hapu groups of the region.	a) The features are acknowledged as having conspicuous, eminent, and/or remarkable cultural and spiritual values in the context of the Hawke's Bay Region.
b) The features are acknowledged as outstanding, by the descendant groups most closely associated with the water body.	b) The features are outstanding in accordance with te ao Māori values, mātauranga Māori and tikanga by descendant groups closely associated with the water body.
c) Evidence is provided in support of outstanding features.	c) Evidence is provided in support of outstanding features.

5.4 It is my opinion that my recommended amendments would:

- (a) reiterate 'outstanding' is in a regional context as per 'outstanding' definition in PC7;
- (b) reiterate the notion that 'outstanding' in a regional context is essentially the 'best of the best' in the region given the words "*conspicuous, eminent, and/or remarkable*" as used in PC7's definitions;
- (c) remove words from criteria (b) that may infer or invoke some sort of third party or iwi veto over the views and expression of outstanding cultural and spiritual value(s) expressed by descendant groups closely associated with the waterbody;
- (d) acknowledge a broader view of te ao Māori values, mātauranga Māori and tikanga; and

(e) retain the expectation that evidence is required to be produced that supports a person's assertion that a water body indeed has an outstanding feature or value in Māori cultural/spiritual terms.

5.5 I note my recommended changes have been incorporated into the Council's preferred version of the screening criteria filed with the Court on 13 July 2023.

5.6 I now explain the reasons why I have recommended the changes.

6. DEVELOPMENT OF THE SCREENING CRITERIA FOR CULTURAL AND SPIRITUAL VALUES

6.1 The version of Schedule 25 that was publicly notified on 31 August 2019 did not include screening criteria for cultural and spiritual values.¹⁷ Under the notified version of PC7, in order for a value to be recognised as 'outstanding' decision makers needed to assess the value against the definition of 'outstanding' and confirm it was "*conspicuous, eminent, and/or remarkable in the context of the Hawke's Bay Region*". Part 1 of the notified version of Schedule 25 provided an "overview of categories of outstanding values and their sub-parts" to assist with this assessment. Sub-values were listed as below to help describe the outstanding cultural and spiritual values were listed as below, but those are not criteria per se and were not all inclusive¹⁸:

Wahi tapu; wahi taonga; wai tapu; rohe boundary; battle sites; pa, kainga; Tauranga waka; mahinga kai; pa tuna; and acknowledged in korero tuku iho, pepeha, whakatauki or waiata.

6.2 The IHP's decisions removed the overview descriptors of the value sets and added a table featuring screening criteria to provide further guidance as to when a value was likely to be outstanding for PC7 purposes, including those as set out above for cultural and spiritual values.

¹⁷ Proposed Plan Change 7, 31 August 2019, above n 1.

¹⁸ At 20.

- 6.3** The decisions version of screening criteria introduce three compulsory criteria (i.e. all of matters in 'List A') for cultural and spiritual values¹⁹. The first of these criteria a), requires the support of wider iwi and hapū groups of the region, and b) the endorsement of descendant groups most closely associated with the water body, most likely whānau and hapū. The third criteria c), is a requirement for evidence in support of the outstanding features. A reference to tangata whenua was added to the value heading. This clearly states who the water body values are derived from, that being tangata whenua. In an RMA sense these are the iwi or hapū with customary authority over a particular area or resource, but they could also be the iwi authority and/or the post settlement governance entity with a mandate to do so. I have assumed they would not include whānau and individuals within that area.
- 6.4** As I understand, these criteria were derived from the Water Conservation Order Review (September 2020) partnership project between the Regional Council, Ministry for the Environment and Auckland Council. As a poignant reminder the report states that “[d]espite nearly 40 years of research, investigations and discussions, to this day there is no nationally accepted criteria that can be used to assess the specific values of freshwater bodies and determine whether they are outstanding in either a national or regional context”.²⁰ Accordingly, while it is somewhat unhelpful not to have a national approach, it does leave room for each region to establish its own criteria.

Cultural and spiritual value set overview in notified version of PC7

- 6.5** In my opinion the sub-values listed in Table 1 of Schedule 25 of the notified version of PC7 were pragmatic and uncomplicated. They set out the expectations of the places that need to be present for 'outstanding-ness' as well as the types of traditional knowledge that would be accepted as verification of those places. This latter part of the sub-values goes to the heart of recognising and acknowledging mātauranga Māori.
- 6.6** However, they had some inherent weaknesses. One the most important weakness of the cultural/spiritual value set in the notified version of Schedule 25 Table 1 is

¹⁹ IHP Decisions Report, above n 12, at 23.

²⁰ Water Conservation Order Review: Outstanding Values: Key Features, above n 10, at 6.

that they do not include a threshold for “outstanding” meaning there was a lack of guidance around when cultural and spiritual values would qualify as outstanding for PC7 purposes. If, as requested by TToH et al., Schedule 25 Table 1 from the notified version was to be reinstated and the decisions version of screening criteria deleted, then that same crucial weakness would be reintroduced.

- 6.7** Another weakness of the cultural/spiritual value set in the notified version of PC7 Table 1 is the focus on types of “places”. This has the potential of limiting or having a bias to small and discrete spaces and not the “landscape context”. This reductionist approach does contradict some important aspects of Māori temporal notions of time and space. There are also weaknesses in the criteria not mentioning concepts of abundance and identity.

Cultural and spiritual value screening criteria in decisions version of PC7

- 6.8** The decisions version of cultural and spiritual value criteria in Schedule 25 seek to emphasise a regional context. They put a lot of weight on support of the whānau, hapū and iwi closely associated with a water body, the wide support of iwi and hapū (nationally and in this case regionally).
- 6.9** As I understand criteria a) in the Decisions version, it seeks to acknowledge that wider iwi views are important in recognising the outstanding status of a waterbody. Having the support of the iwi in a region provides a level of confidence that a waterbody is widely considered outstanding from their perspective or in other words “these features must be of significance to a larger and more widely representative iwi group, rather than solely for one iwi/hapū group.”²¹ This view is represented in many of the WCO decisions as described by Belinda Harper in the Water Conservation Order Review report. I respectfully disagree with this. In my opinion the views of the descendant groups closely associated with the waterbody should have precedence over other wider views. This precedence relates to concepts of mana and kaitiakitanga rather than to outstanding status.

21 Water Conservation Order Review: Outstanding Values: Key Features, above n 10, at [156].

- 6.10** In the decisions version of Schedule 25, each of the respective sub-values are accompanied by an inclusive set of evidential sources listed in the last column, including those evidential sources that would likely support a cultural and spiritual criteria. I assume that these sources could support some or all of the sub values or outstanding indicators.
- 6.11** In my mind the first and second criteria (in the decisions version) place an emphasis on getting support of iwi and hapū, and secondly articulating what features are outstanding. The first two criteria can be met by formal support at a particular point of time by iwi and hapū of the region and the descendant groups most closely associated with the water body. The first two criteria can unintentionally act as a veto against an outstanding water body. An iwi or descendant group could choose not to be involved for any particular reason and this would have a detrimental impact on whether an outstanding water body was considered. For these reasons alone they oppose any outstanding water body in their rohe, and as a result the first criterion cannot be met.
- 6.12** I have also identified an issue with relying on third parties in the criteria. It would be the only criteria in PC7's Schedule 25 that would involve third parties in that way.
- 6.13** The third criterion can be met by providing evidence that the "features" are outstanding from a cultural and spiritual perspective. There are no quantitative or qualitative methods or thresholds stipulated in the criterion, so it is left for tangata whenua to articulate the method of evaluating and describing the outstanding values of the features of the water body. The decision for what is outstanding is then left to a decision-making body to determine whether the outstanding threshold has been met based on supporting evidence. As set out in Table 1, I have not recommended any changes to criteria (c).
- 6.14** As I understand it, the IHP evaluated each water body against their adopted screening criteria, and considered the definition of 'outstanding', together with information set out in submissions, and the information provided as part of expert and lay evidence. This informed an assessment for whether those water bodies clearly qualified as Outstanding Water Bodies.

6.15 Ultimately, the IHP issued its decisions with a noticeably different form and style of Schedule 25, by using screening criteria instead of the 'overview' listings of values and sub-values in the original notified version of PC7 which lacked any thresholds.

6.16 Notwithstanding this, as I have stated above in my evidence, I have recommended further amendments to the cultural/spiritual value screening criteria which I believe are appropriate, effective and efficient.

7. ASSESSMENT OF WATER BODIES SOUGHT TO BE ADDED BY APPELLANTS

Lower Ngaruroro River

7.1 In their decision report, the IHP recorded that they "had no specific submissions or evidence that there were outstanding cultural and spiritual values in the Ngaruroro catchment" (including the estuary).²²

7.2 TToH et al. have requested the lower Ngaruroro River be reinstated into Schedule 25 for the cultural/spiritual values particularly noting Wāhi Taonga, Ki Uta ki Tai, Whakapapa o te Wai.

7.3 Since the IHP's decisions on PC7 were issued, I am unaware of any new information or evidence that the appellants have produced to support their proposition that the Lower Ngaruroro River should be added into Schedule 25 for outstanding cultural and spiritual values being "Wāhi Taonga, Ki Uta ki Tai, Whakapapa o te Wai."

7.4 Since the PC7 decision was released, the Environment Court has issued an interim decision on an application for a Water Conservation Order which discusses the aquatic bird habitat values provided by the Ngaruroro River²³, but not cultural/spiritual values of the Lower Ngaruroro River nor the Waitangi Estuary.

²² IHP Decisions Report, above n 12, at [6.90].

²³ Interim Report of the Environment Court re Ngaruroro Clive Water Conservation Order [2022] NZEnvC 227. <https://owhaoko.com/app/uploads/2022-NZEnvC-227-Nga-Kaitiaki-O-Te-Awa-O-Ngaruroro.pdf>

7.5 Based on the information available to me, including the information summarised in the Ngaruroro River and Estuary Summary of Values report August 2020, and applying the decisions version of criteria, I agree with the IHP's conclusion that the lower Ngaruroro River should not be added to Schedule 25 (unless there is substantive new evidence produced supporting claims that the lower Ngaruroro River indeed has one or more outstanding cultural/spiritual values). My opinion is the same when I apply my recommended amended version of the three criteria.

Waitangi Estuary

7.6 The PC7 IHP's decision report covered the Ngaruroro River and Estuary (being Waitangi Estuary) in the same section, as did the Ngaruroro River and Estuary Summary of Values report²⁴. The Tūtaekurī River also flows into the same estuary where it was covered in paragraphs 6.151 to 6.157 of the IHP's decisions report²⁵. As noted above, the IHP recorded that they "had no specific submissions or evidence that there were outstanding cultural and spiritual values in the Ngaruroro catchment" (including the estuary)²⁶. The IHP found the mainstem of the Tūtaekurī River upstream of the State Highway 50 bridge to have outstanding cultural and spiritual values, but this does not extend downstream to the estuary²⁷.

7.7 TToH et al. have requested the Waitangi Estuary be reinstated into Schedule 25 for the cultural/spiritual values particularly noting Wāhi taonga, Kōhanga ika.

7.8 Since the IHP's decisions on PC7 were issued, I am unaware of any new information or evidence that the appellants have produced to support their proposition that the Waitangi Estuary should be added into Schedule 25 for outstanding cultural and spiritual values being "Wāhi Wahi taonga, Kōhanga ika."

7.9 Based on the information available to me, including the information summarised in the Ngaruroro River and Estuary Summary of Values report August 2020²⁸, and applying the decisions version of criteria, I agree with the IHP's conclusion that the

24 Ngaruroro Summary of Values Report, above n 7.

25 IHP Decisions Report, above n 12.

26 At [6.90].

27 At [6.157].

28 Above n 7.

Waitangi Estuary should not be added to Schedule 25 (unless there is substantive new evidence produced supporting claims that the Waitangi Estuary indeed has one or more outstanding cultural/spiritual values). My opinion is the same when I apply my recommended amended version of the three criteria.

Heretaunga Aquifer

- 7.10** The PC7 IHP’s decision report specifically covers the Heretaunga Aquifer where the IHP records that they “had no substantive evidence that [the Heretaunga Aquifer] has outstanding cultural and spiritual values on a region wide basis...”²⁹
- 7.11** TToH et al. have requested that the cultural and spiritual values of the Heretaunga Aquifer be recognised as an outstanding value, particularly noting Whakapapa o te Wai, Wahi Taonga, Waiora, Mauri.
- 7.12** Since the IHP’s decisions on PC7 were issued, I am unaware of any new information or evidence that the appellants have produced to support their proposition that the Heretaunga Aquifer should be added into Schedule 25 for outstanding cultural and spiritual values being “Whakapapa o te Wai, Wahi Taonga, Waiora, Mauri.”
- 7.13** Based on the information available to me, including the information summarised in the Heretaunga Aquifer Summary of Values report August 2020³⁰, and applying the decisions version of criteria, I agree with the IHP’s conclusion that the Heretaunga Aquifer should not be added to Schedule 25 (unless there is substantive new evidence produced supporting claims that the Heretaunga Aquifer indeed has one or more outstanding cultural/spiritual values). My opinion is the same when I apply my recommended amended version of the three criteria.

Tukituki River and Estuary

- 7.14** The PC7 IHP’s decision report specifically covers the Tukituki River and Estuary.³¹ The IHP’s decision report acknowledges the significance of the awa for Heretaunga

29 IHP Decisions Report, above n 12, at [7.2].

30 Above n 5.

31 IHP Decisions Report, above n 12, at [6.138] - [6.150].

Tamatea hapū and Ngāti Kahungunu Iwi Incorporated³². Ultimately, the IHP concluded that “the Tukituki River from the State Highway 50 bridge downstream to the sea has outstanding cultural and spiritual values”³³. Consequently, the decisions version of Schedule 25 in PC7 lists the Tukituki River and Estuary as follows:

<i>Tukituki River downstream of SH50 bridge to the sea, including the estuary</i>	<i>Outstanding characteristic or Values</i>
<i>The Tukituki River is 145km long, rising in the Ruahine Ranges and entering the sea at Haumoana. It is a tipuna awa, and there is evidence of 7-8 centuries of occupation by Māori. The lower river and estuary support the largest population of wading birds in the region.</i>	<i>Cultural and Spiritual Values Ecology (habitat for native aquatic birds, particularly in the lower river)</i>

7.15 TToH et al. have requested the Tukituki River in its entirety be reinstated into Schedule 25 for the cultural/spiritual values particularly noting Wāhi Taonga, Ki Uta ki Tai, Whakapapa o te Wai.

7.16 TToH et al. have also requested the Tukituki Estuary be included into Schedule 25 for cultural/spiritual values particularly noting “Wāhi Taonga, Kōhanga ika” which is more specific than “cultural and spiritual values” mentioned in the decisions version.

7.17 Since the IHP’s decisions on PC7 were issued, I am unaware of any new information or evidence that the appellants have produced to support their proposition that the entire Tukituki River, i.e. the Tukituki River above SH50 should be added into Schedule 25 for outstanding cultural and spiritual values being "Wāhi Taonga, Ki

32 At [6.141].

33 At [6.144].

Uta ki Tai, Whakapapa o te Wai.” I am also unaware of any new information or evidence that the appellants have produced in support their proposition that the Tukituki Estuary should be added into Schedule 25 for outstanding cultural and spiritual values specifically being described as “Wāhi Taonga, Kōhanga ika.”

7.18 Based on the information available to me, including the information summarised in the Tukituki River and Estuary Summary of Values report August 2020, and applying the decisions version of criteria, I agree with the IHP’s conclusion that the Tukituki river downstream of State Highway 50 bridge including the estuary should be included in Schedule 25 for outstanding cultural and spiritual values (as has been done in the decisions version). My opinion is the same when I apply my recommended amended version of the three criteria.

7.19 Applying the same information and test, I agree with the IHP’s conclusion that the Tukituki River upstream of the State Highway 50 bridge should not be added to Schedule 25 (unless there is substantive new evidence produced supporting claims that the entire Tukituki River indeed has one or more outstanding cultural/spiritual values). My opinion is the same when I apply my recommended amended version of the three criteria.

Ruataniwha Aquifer

7.20 The PC7 IHP’s decision report specifically covers the Ruataniwha Aquifer at paragraph 7.28 where the IHP records that they find the Ruataniwha Aquifer “does not have any outstanding values as its geology is not conspicuous, eminent and/or remarkable in the region, and we had no evidence that it met the screening criteria for having outstanding cultural or spiritual values.”³⁴

7.21 TToH et al. have requested that the cultural and spiritual values of the Ruataniwha Aquifer be recognised as an outstanding value, particularly noting Waiora, Wāhi taonga, Mauri, Whakapapa o te Wai.

³⁴ At [7.28].

7.22 Since the IHP’s decisions on PC7 were issued, I am unaware of any new information or evidence that the appellants have produced to support their proposition that the Ruataniwha Aquifer should be added into Schedule 25 for outstanding cultural and spiritual values being "Waiora, Wāhi taonga, Mauri, Whakapapa o te Wai."

7.23 Based on the information available to me, including the information summarised in the Ruataniwha Aquifer Summary of Values report August 2020³⁵, and applying the decisions version of criteria, I agree with the IHP’s conclusion that the Ruataniwha Aquifer should not be added to Schedule 25 (unless there is substantive new evidence produced supporting claims that the Ruataniwha Aquifer indeed has one or more outstanding cultural/spiritual values). My opinion is the same when I apply my recommended amended version of the three criteria.

Karamū River

7.24 The PC7 IHP’s decision report specifically covers the Karamū River³⁶. The IHP decision report notes that “the river is a taonga of Ngāti Hori, and we acknowledge their efforts and achievements in improving and restoring the riparian margins of the river, and helping restore its mauri.” The IHP concludes “there was insufficient evidence that the Karamū River met the screening criteria” and consequently the IHP did not list the Karamū River in the decisions version of Schedule 25.

7.25 TToH et al. have requested that the Karamū River be reinstated into Schedule 25 for the cultural/spiritual values particularly noting Wahi taonga and Whakapapa o te Wai.

7.26 Since the IHP’s decisions on PC7 were issued, I am unaware of any new information or evidence that the appellants have produced to support their proposition that the Karamū River should be added into Schedule 25 for outstanding cultural and spiritual values being " Wahi taonga and Whakapapa o te Wai."

³⁵ Above n 8.

³⁶ IHP Decisions Report, above n 12, at [7.3] - [7.6].

7.27 Based on the information available to me, including the information summarised in the Karamū River Summary of Values report August 2020, and applying the decisions version of criteria, I agree with the IHP’s conclusion that the Karamū River should not be added to Schedule 25 (unless there is substantive new evidence produced supporting claims that the Karamū River indeed has one or more outstanding cultural/spiritual values). My opinion is the same when I apply my recommended amended version of the three criteria.

Lake Poukawa and Pekapeka Swamp

7.28 The PC7 IHP’s decision report specifically covers the Lake Poukawa and Pekapeka Swamp.³⁷ The IHP’s decision report records that “we do not have sufficient evidence that Lake Poukawa and the Pekapeka swamp meet the screening tests for having outstanding cultural or spiritual values”³⁸ and consequently the IHP did not list the lake or swamp in the decisions version of Schedule 25.

7.29 TToH et al. and the Māori Trustee have requested that Lake Poukawa and Pekapeka Swamp (also known as Te Wai-nui-a-Tara) be reinstated into Schedule 25 for outstanding cultural/spiritual values.

7.30 Since the IHP’s decision was issued, the Council has received additional information from the Māori Trustee appellant. I have received this information in the form of written evidence by kaumatua Mr Jerry Hapuku about the cultural significance of Lake Poukawa.

7.31 The decisions version of the screening criteria when applied are likely to be met when reference is made to the new evidence of Mr Jerry Hapuku on behalf of the Māori Trustee. There may be wide support from “iwi” to recognise the lake and wetland as outstanding, based on the early 2018 and 2019/2020 assessments and the appeals of Te Taiwhenua o Heretaunga and NKII. However, if the decisions version of the criteria were to be applied, there would ideally be a written statement on behalf of iwi and hapū of the region that they support the

³⁷ At [7.8] – [7.11].

³⁸ At [7.10].

outstanding cultural and spiritual values of Lake Poukawa and Pekapeka wetland. This would meet the first and second criteria. Mr Hapuku is a well-known rangatira and spokesperson for the hapū and whānau of Lake Poukawa. I believe his evidence covers off the descendant groups with closest association with the waterbody (criterion b)).

7.32 The evidence of Mr Jerry Hapuku is relevant and compelling. His evidence provides a tikanga based narrative of the lake and wetland's significance. This would meet the third criterion. I am confident that Lake Poukawa and Pekapeka Swamp meets the decisions version of PC7's screening criteria tests for evidence that supports the waterbody as outstanding.

7.33 I have also considered the information summarised in the Lake Poukawa and Pekapeka Swamp Summary of Values report August 2020³⁹.

7.34 When I apply my recommended amended version of the three criteria, I am satisfied that Lake Poukawa and Pekapeka Swamp meet the screening criteria and is outstanding in a regional context.

7.35 I observed the lake and wetland during my site visits in July 2021. I observed the lake and wetlands to be a visually distinct and contiguous landscape which is consistent with the Summary of cultural values associated with water bodies in Hawke's Bay.⁴⁰

7.36 I recommend that Lake Poukawa and Pekapeka swamp be reinstated into Schedule 25 for its outstanding cultural and spiritual values.

Makaroro River

7.37 TToH et al's notice of appeal requests that the Makaroro River from its source to the confluence with the Waipawa River be included in Schedule 25⁴¹. However, in Table A of that notice of appeal, the Makaroro River is requested to have outstanding values identified for ecology, landscape and geology. Cultural and

39 Above n 4.

40 Above n 3, at 8.

41 Appeal of TToH et al., above n 13, at [7(d)].

spiritual values are listed under the 'significant value' heading rather than being sought to be included as an outstanding value.

7.38 For completeness, I have considered whether the Makaroro River would be an outstanding water body in terms of the cultural and spiritual value set of the screening criteria. The IHP considered the Makaroro River at 4.8 – 4.12 of its decision⁴². The IHP's view was that "the submissions did not substantiate that such [cultural and spiritual] values exist on the Makaroro River."⁴³

7.39 Since the IHP's decisions on PC7 were issued, I am unaware of any new information or evidence that the appellants have produced to support their proposition that the Makaroro River should be added into Schedule 25 for outstanding cultural and spiritual values being "wāhi taonga".

7.40 Based on the information available to me, including the information summarised in the Makaroro River Summary of Values report August 2020, and applying the decisions version of criteria, I agree with the IHP's conclusion that the Makaroro River should not be added to Schedule 25. My opinion is the same when I apply my recommended amended version of the three criteria.

8. CONCLUSION

8.1 TToH et al. have sought the deletion of the screening criteria set out in the cultural and spiritual (tangata whenua) value set.

8.2 I have recommended that the screening criteria a) and b) are amended, and criteria c) retained as worded.

8.3 TToH et al. have sought the reinstatement or inclusion of the Lower Ngaruroro River, Waitangi Estuary, Heretaunga Aquifer, the Tukituki River above SH50, Ruataniwha Aquifer, Karamu River, Lake Poukawa and Pekapeka Swamp in schedule 25 as outstanding for cultural and spiritual values.

⁴² IHP Decisions Report, above n 12.

⁴³ At [4.11].

- 8.4** I have reviewed the information provided in section 1.10 of my evidence, including the findings of the IHP. I have found there is insufficient evidence to meet the screening criteria for six of these (unless there is substantive new evidence produced supporting claims that the waterbodies indeed has one or more outstanding cultural/spiritual values).
- 8.5** I have recommended that Lake Poukawa and Pekapeka swamp be reinstated into Schedule 25 for its outstanding cultural and spiritual values.

A handwritten signature in blue ink that reads "Antoine Coffin". The signature is written in a cursive style with a large initial 'A'.

Antoine Coffin

Date: 11 August 2023