

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 TAIAO 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

**REBUTTAL EVIDENCE OF BELINDA HARPER ON BEHALF OF HAWKE'S BAY
REGIONAL COUNCIL**

Planning

17 January 2024

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Appendix A: Updated version of HBRC’s preferred version of PC7

1. INTRODUCTION

1.1 My name is Belinda Harper, and I am a Senior Policy Planner at the Hawke's Bay Regional Council (**HBRC** or **Council**). My full qualifications are set out in my evidence in chief (**EIC**) in paragraphs 1.1–1.4.

1.2 I confirm that this rebuttal statement of evidence has been prepared in accordance with the Code of Conduct for Expert Witnesses contained in the Environment Court Practice Note 2023.

1.3 This statement of rebuttal evidence responds to:

- (a) The evidence filed by:
 - i. Mr Maurice Black (planning and cultural) for Te Taiwhenua o Heretaunga (**TToH**) dated 22 August 2023, and 22 November 2023.
 - ii. Mr Richard Matthews (planning) for Genesis dated 22 September 2023.
- (b) The joint witness statements for the cultural, geology, ecology and planning conferencing and the associated further information provided by parties in November 2023 in response to the questions set out in the planning joint witness statement.

1.4 I participated in planning expert conferencing on 16 October 2023 and am a signatory to the joint witness statement (**JWS**) of the same date.

1.5 I have reviewed the rebuttal evidence of Mr Maurice Black on behalf of TToH, filed on 22 November 2023, and responses from experts on behalf of Royal Forest and Bird Protection Society of New Zealand Incorporated (**Forest and Bird**), TToH, Genesis from November 2023 in response to a memo sent out with questions as signalled in the planning JWS.

1.6 I have also reviewed the rebuttal evidence of Dr Greg Ryder (peer review) filed alongside this evidence and the following HBRC experts filed 23 November 2023:

- (a) Jens Rekker (geology);

- (b) Antoine Coffin (spiritual and cultural values);
- (c) Rob Greenaway (recreation); and
- (d) Dr Andrew Hicks (ecology).

1.7 My rebuttal evidence addresses the following key matters:

- (a) Changes to definition of outstanding water body (**OWB**).
- (b) The inclusion of estuaries under the definition of OWB.
- (c) The request by TToH to separate the Schedule 25 into freshwater and coastal areas.
- (d) Definition of outstanding.
- (e) The request by TToH to prevent abstractive and land use values having the ability to be attributed a significant values status.
- (f) The request by TToH for the list of significant values set out in the exhibit to Mr Black's rebuttal statement.
- (g) The OWB Identification Screening Framework.
- (h) The addition of a new value set titled 'Aquifers and aquifer systems'.
- (i) Addition of new outstanding water bodies.
- (j) Appendix 1 to Mr Black's rebuttal submitted 22 November 2023 particularly new amendments and amendments to parts of the Hawke's Bay Regional Resource Management Plan (**RRMP**) that were not notified as part of PC7.

1.8 Attached to this evidence as Appendix A is an updated set of PC7 provisions incorporating all changes I am supporting following consideration of the above matters (**HBRC rebuttal version**). I discuss key changes to the provisions in the relevant parts of my evidence below.

2. PLANNER CONFERENCING

2.1 On 16 October 2023, expert planning conferencing took place between Maurice Black, Richard Matthews, and myself. A copy of the Joint Witness Statement was provided to the Court on 20 October 2023. While there was agreement amongst the planners on a number of issues, agreement is yet to be reached on the following matters:

- (a) if the term ‘outstanding water body’ should encompass estuaries or be split into two terms ‘OWB’ and ‘outstanding coastal areas’.
- (b) if consumptive and economic values, such as abstractive and land use values, should have the ability to be attributed a significant value status, or specifically excluded by way of amendments to Policy LW1A.2(bA).
- (c) if the cultural and spiritual values set out in Maurice Black’s rebuttal dated 22 November 2023 should be identified as significant values and included in Schedule 25.1
- (d) The Outstanding Water Body Identification Screening Criteria.
- (e) If additional water bodies should be identified as outstanding and added to Schedule 25.

2.2 Each of these matters are discussed in more detail below.

2.3 At expert planning conferencing I agreed to provide questions to the parties for feedback and ideas to amend the screening criteria in light of the findings from the planning JWS. A memo was sent out to all parties on 26 October 2023 seeking feedback to inform further work on the screening criteria. The memo and responses are set out in the bundle.² I return to this topic below at part 9 of my evidence.

3. CHANGES TO THE DEFINITION OF ‘OUTSTANDING WATER BODY’

3.1 In Mr Black’s Evidence in Chief (**EIC**) it was proposed to change the PC7 definition of ‘outstanding water body’ to read “Outstanding water body means freshwater bodies and estuaries ~~coastal~~ waters, or parts thereof, ~~identified in Schedule 25~~ that have one or more outstanding cultural, spiritual, recreational, landscape, geological, hydrological, natural character or ecological value(s)”.³

3.2 I address the coastal aspect in the next section below.

1 Exhibit to Maurice Black’s Rebuttal Statement of Evidence, 22 November 2023, at 27–32 [\[\[302.0123\]\]](#)–[\[\[302.0128\]\]](#).
 2 Memo to parties with questions to assist with potential amendments to OWB screening framework as directed by the planning Joint Witness Statement, 26 October 2023 [\[\[401.0017\]\]](#).
 Responses from parties on the memo sent on 26/10/2023 with questions to assist with potential amendments to OWB screening framework as directed by the planning Joint Witness Statement, November 2023 [\[\[401.0044\]\]](#).
 3 Statement of Evidence of Maurice Black, 28 August 2023, at [8.1(m)] [\[\[302.0055\]\]](#).

- 3.3** I agree with Mr Black's replacement of the terms 'recreation', 'geology' and 'ecology' with 'recreational', 'geological' and 'ecological'. I consider this change to be minor.
- 3.4** I do not agree with Mr Black's inclusion of a new value set titled 'hydrological' and the removal of the cross reference to the list of OWB in Schedule 25 for the following reasons:
- (a) TToH's original submission did not request a new standalone value set titled 'hydrological' be added to the definition of 'outstanding water body'.
 - (b) Including a 'hydrological' value set would result in a new value set in the framework that has not been fully assessed. Mr Black has not proposed new screening criteria for a standalone hydrological value set for consideration.
 - (c) Mr Rekker considered the hydrological aspects of water bodies when assessing waterbodies against the geology screening criteria,⁴ and so a separate hydrological value set is not necessary. If the geology and natural character criteria are combined, as recommended in my evidence below, I note that the New Zealand Geopreservation Criteria recognises water bodies for hydrological aspects as well as geological.
 - (d) The IHP recognised, through their inclusion in Schedule 25, the Mohaka, Ngaruroro, Taruarau, and Te Hoe Rivers as being outstanding for their landscape, natural character and/or recreational values noting their hydrological features such as rapids and gorges. This demonstrates the screening criteria currently has a pathway to recognise water bodies with outstanding hydrological features through the landscape, geological, natural character, and recreational value sets.
- 3.5** I also do not agree with the removal of the cross reference to the list of OWB in Schedule 25 because the National Policy Statement for Freshwater Management (**NPSFM**) requires outstanding water bodies to be identified in a regional plan or

4 Statement of Evidence of Jens Rekker, 11 August 2023, at [5.3(a)] [\[\[301.0117\]\]](#).

regional policy statement. As such, water bodies must be listed in Schedule 25 to be recognised as an OWB under the NPSFM, and so the cross reference to the list of OWBs in Schedule 25 is appropriate in the definition of ‘outstanding water body’.

4. OUTSTANDING WATER BODIES AND COASTAL WATERS

4.1 The planners have agreed there should be consistent management of outstanding and significant values and effects that span between the freshwater and estuarine environments.

4.2 However, there remains disagreement amongst the planning experts around how this is best achieved. The disagreement is focussed on the following matters:

- (a) If the term estuary should be replaced with a more general reference to coastal waters (as per the requested change in Mr Black’s evidence shown in paragraph 3.1 above).
- (b) If the definition of OWB should incorporate both freshwater and estuary areas as set out in the 13 July version of PC7, or if the two areas should be separately defined and referred to as ‘outstanding water bodies’ and ‘outstanding coastal waters’ as requested in TToH’s Notice of Appeal at Paragraph 7(k).

4.3 I discuss each of these matters further below:

Replacing the term estuary with coastal waters

4.4 The decisions version of PC7 includes estuaries in recognition that outstanding values extend between freshwater/estuarine environments and ensure their consistent management. Mr Black proposes to delete the term estuaries with a more general reference to coastal waters.

4.5 In my opinion, it is appropriate for the focus to remain on estuaries because of their close links with freshwater bodies, particularly for those outstanding values, such as wildlife and native fish habitats, that regularly extend between the freshwater and estuarine environments.

4.6 In Mr Black’s opinion, specifying estuaries in the definition of OWB “*means for all the coastal waters in the region, only estuaries can qualify as outstanding*” noting “*along the entire coastline only an estuary can qualify as outstanding*”.⁵ In Mr Black’s opinion this definition prevents other coastal waters with outstanding values from being protected. I have a different opinion and note what Mr Black is essentially commenting on is the category of ‘open’ coastal waters. While I agree that any special features (for example a beach, or reef) located within or adjacent to open coastal waters would not fall under the OWB definition, I do not agree the OWB definition ‘prevents’ the protection of beaches or open coastal waters; nor does it prevent them being found to be ‘outstanding’ for the purpose of another RMA provision such as section 6(b) of the RMA or in accordance with policy 13 and 15 of the New Zealand Coastal Policy Statement (**NZCPS**).

4.7 I further note given the primary driver of PC7 is the NPSFM, it would be a significant step to broaden the definition to include reference to all coastal waters (i.e. from the line of mean high water springs to 12 nautical miles off the coast) such as reefs, beaches, fishing areas, and diving spots etc. This is beyond the scope of PC7 as notified.

4.8 For the reasons set out above and for the reasons stated in paragraphs 7.7 and 7.8 of my EIC it is my view that the reference to estuaries should be retained.⁶

One term OWB which includes estuaries or coastal areas

4.9 The decisions version of PC7 deliberately extends the definition of OWB to include estuaries for the purposes of integrated management.⁷

5 Statement of Evidence of Maurice Black, 28 August 2023, at [6.9] [\[\[302.0039\]\]](#), [6.10] [\[\[302.0039\]\]](#) and [8.1(a)] [\[\[302.0052\]\]](#).

6 Statement of Evidence of Belinda Harper, 11 August 2023, at [7.7] [\[\[301.0246\]\]](#) and [7.8] [\[\[301.0247\]\]](#).

7 Decision Report of the Independent Hearing Panel, June 2021, at [3.30] [\[\[101.0423\]\]](#), [3.31] [\[\[101.0423\]\]](#), [5.9] [\[\[101.0440\]\]](#) and [5.10] [\[\[101.0440\]\]](#).

4.10 Mr Black proposes to change the definition of OWB to relate to freshwater and add a new term ‘outstanding coastal waters’,⁸ on the basis that the NPSFM OWB provisions only apply to freshwater bodies.⁹

4.11 For the reasons stated in paragraphs 7.4 and 7.5 of my EIC,¹⁰ I still consider using one term that covers both the freshwater and estuary parts of an OWB to be appropriate.

5. DEFINITION – ‘OUTSTANDING’

5.1 In Mr Black’s EIC it was proposed to change the PC7 definition of ‘outstanding’ to add the word unique as follows “..*outstanding means conspicuous, eminent, unique and/or remarkable in the context of the Hawke’s Bay Region*”.¹¹

5.2 I have been unable to confirm the scope for this request because this request was not raised in TToH’s original submission and notice of appeal. This will be discussed further in the Council’s legal submissions.

5.3 However, I do not consider that the addition of ‘unique’ is necessary, as the surrounding words indicate that the water body must be outstanding in a conspicuous, eminent and remarkable way, which already conveys that the water body must have some special element to it. As has been briefly discussed in Dr Hicks’ rebuttal evidence, ‘unique’ indicates that there is only one, and so may preclude water bodies that have similarly remarkable and conspicuous elements.¹²

8 Statement of Evidence of Maurice Black, 28 August 2023, at [2(i)] [\[\[302.0027\]\]](#).

9 Statement of Evidence of Maurice Black, 28 August 2023, at [7.5] [\[\[302.0050\]\]](#).

10 Statement of Evidence of Belinda Harper, 11 August 2023, at [7.4] [\[\[301.0244\]\]](#) and [7.5] [\[\[301.0245\]\]](#).

11 Statement of Evidence of Maurice Black, 28 August 2023, at [8.1(m)] [\[\[302.0055\]\]](#).

12 Rebuttal Statement of Evidence of Andrew Hicks, 22 November 2023, at [2.17] [\[\[301.0099\]\]](#).

6. CONSUMPTIVE AND ECONOMIC USE VALUES

6.1 The planners have agreed:

- (a) The definition of OWB excludes consumptive and economic values from being an outstanding value.
- (b) Significant values currently include consumptive and economic use values through Policy LW1.2(bA).

6.2 There remains disagreement amongst the planning experts on whether consumptive and economic use values should have the ability to be attributed a significant value status.

6.3 In Mr Black's opinion "*consumptive or abstractive values, whether they are significant or outstanding, should not be considered or categorised as values of an outstanding water body*".¹³

6.4 I disagree in relation to their recognition as significant values and maintain my opinion for the reasons stated in paragraphs 8.9–8.13 of my EIC.¹⁴ The NPSFM does not exclude consumptive use values from being significant values and I consider it is not appropriate for PC7 to specify which values could and could not be identified as significant values of OWBs. In my view Policy LW1.2(bA) should be retained as set out in HBRC's version of PC7 dated 13 July 2023, and I consider that this view is consistent with the recognition in the NPSFM of some abstractive or use values (see paragraph 8.10 of my EIC).¹⁵ I note for completeness that I agree with Mr Black that consumptive and economic values should not be identified as outstanding values of water bodies.

¹³ Statement of Evidence of Maurice Black, 28 August 2023, at [10.2] [\[\[302.0062\]\]](#).

¹⁴ Statement of Evidence of Belinda Harper, 11 August 2023, at [8.9]–[8.13] [\[\[301.0251\]\]](#)–[\[\[301.0252\]\]](#).

¹⁵ HBRC preferred version of PC7 as at 13 July 2023, at 6 [\[\[501.1543\]\]](#); and Statement of Evidence of Belinda Harper, 11 August 2023, at [8.9] [\[\[301.0251\]\]](#).

7. SIGNIFICANT VALUES

7.1 In conferencing the planners agreed:

- (a) Identifying significant values of OWB requires a robust process of evaluation. The evaluation of significant values was not undertaken by HBRC as part of PC7.
- (b) In the absence of PC7 including these significant values (and until the RRMP is reviewed to give effect to the NPSFM), by default, consenting will be on a case-by-case approach against the list of identified outstanding values in Schedule 25. Additionally, any potential significant values as identified in NPSFM Appendices 1A and 1B will also be considered as introduced in the HBRC version of 13 July 2023.
- (c) In the HBRC version of 13 July 2023, the reference to Appendices 1A and 1B only relates to Policy LW3B (existing activities). The planners agreed consideration should be given to including the same reference to NPSFM Appendices 1A and 1B into Policy LW3A.¹⁶

7.2 The planning JWS shows there remains disagreement amongst the planning experts on whether the default position for consenting provides appropriate consideration of significant cultural and spiritual values.

Process of including significant values in PC7

7.3 The planning experts have agreed the assessment and identification of potentially 'significant values' of the region's water bodies was not undertaken as part of the PC7 process. This was deemed out of scope of the OWB project early 2017.

7.4 Paragraphs 15.2 and 15.3 of my EIC discusses why eight of the 38 OWB initially listed in the notified version of PC7 had simplistic listings of significant values.¹⁷

¹⁶ Joint Witness Statement of Planning Experts, 16 October 2023, at [2] [\[\[401.0013\]\]](#).

¹⁷ Statement of Evidence of Belinda Harper, 11 August 2023, at [15.2]–[15.3] [\[\[301.0267\]\]](#).

Schedule 25: Listing of significant values for outstanding water bodies

- 7.5** It is Mr Black's view that significant values for OWB that are either widely recognised or clearly expressed in existing planning documents, should be added to Schedule 25.¹⁸ On 22 November 2023, Mr Black provided a list of significant values that in his opinion should be included in Part 2, Table 1 of PC7.¹⁹
- 7.6** I note this request is in addition to the request by Forest and Bird in their notice of appeal to reinstate the list of significant values in the notified version of PC7, which includes a range of values, including economic and consumptive uses.
- 7.7** For the reasons stated in paragraphs 15.4 to 15.10 of my EIC, I agree with the IHP's decision to remove the list of significant values from the notified version of PC7.
- 7.8** In particular, I note that Policies LW3A and LW3B require the protection of the named outstanding values, which will inherently protect the most significant values associated with the particular water body. In my opinion where cultural and spiritual values have been identified as an outstanding value of a water body then these values will be protected in future consent processes.

Policy LW3A

- 7.9** As part of the planning JWS, the planners agreed consideration should be given to including the same reference from Policy LW3B to NPSFM Appendices 1A and 1B into Policy LW3A.
- 7.10** In my opinion the reference to Appendices 1A and 1B of the NPSFM should also be included in Policy LW3A as follows:

¹⁸ Rebuttal Statement of Evidence of Maurice Black, 22 November 2023, at [6](c) [\[\[302.0082\]\]](#).

¹⁹ Exhibit to Maurice Black's Rebuttal Statement of Evidence, 22 November 2023, at 27 [\[\[302.0123\]\]](#).

Policy LW3A Resource Consent Decision Making Criteria – Outstanding Water Bodies identified in Schedule 25 (new activities)

1A...

1 In relation to those types of activities identified in Policy LW3A.2 a consent authority must take into account:

- a)
- b) the extent to which the activity may, on its own or cumulatively adversely affect:
 - i. the significant values (if any) identified in Schedule 25 of the relevant outstanding water body and/or
 - ii. any relevant values identified in Appendix 1A and 1B of the NPSFM 2020, where there is evidence that such values are present in the particular water body, prior to the operative date of the relevant catchment based plan change; and
- c)
- d)

7.11 The changes suggested above make it clear that before the significant values of OWB are identified, when assessing new activities near OWBs decision makers must consider the extent to which the activity may adversely affect any of the relevant values identified in Appendix 1A or 1B of the NPSFM.

8. OUTSTANDING WATER BODY IDENTIFICATION SCREENING CRITERIA

Planning JWS - screening criteria

8.1 In conferencing, the planning experts considered the decisions made by the IHP and the high thresholds associated with the screening criteria. With respect to the OWB identification screening criteria, the planning experts have agreed that:

- a) The intent of the screening criteria is to provide clear, objective, and transparent criteria that can be used to assist with the identification of water bodies that are highly likely to meet the definition of outstanding in PC7. That is the best of the best water bodies in the region.

- b) The test as to what is outstanding is a reasonably rigorous one and, to qualify as outstanding, a characteristic would need to be quite out of the ordinary on a regional basis.
- c) To qualify as outstanding, the water body must clearly and unambiguously meet the screening criteria for the relevant value set and the definition of 'outstanding'.

Key areas of disagreement

- 8.2** Disagreement remains around the most appropriate wording of the screening criteria while also ensuring the intent of the criteria set out in Paragraph 8.1(a)–(c) above is not undermined.
- 8.3** In an attempt to address these issues, in the planning conferencing I agreed to provide questions to the parties for feedback and ideas to amend the screening criteria in light of the findings from the planning JWS. A memo was sent out to all parties on 26 October 2023, and responses were received in November.²⁰

Recap of key purpose of screening criteria

- 8.4** As it informs the approach I have taken in responding to the other parties' evidence and the matters raised in the planning JWS and subsequent memo and responses, I wish to summarise the purpose and role of the screening criteria before moving on to the specific comments and changes that have been sought by the parties.
- 8.5** The IHP included a set of screening criteria within the decisions version of PC7 noting "*These criteria are based on well founded legal precedents*".²¹ The criteria stemmed from a detailed review of over 32 WCO decisions, which looked at the key factors and characteristics used by the various courts and tribunals when

²⁰ Memo to parties with questions to assist with potential amendments to OWB screening framework as directed by the planning Joint Witness Statement, 26 October 2023 [\[\[401.0017\]\]](#).
Responses from parties on the memo sent on 26/10/2023 with questions to assist with potential amendments to OWB screening framework as directed by the planning Joint Witness Statement, November 2023 [\[\[401.0044\]\]](#).

²¹ Decision Report of the Independent Hearing Panel, June 2021, at [4.6] [\[\[101.0436\]\]](#).

determining if a value is outstanding.²² This is supported by the evidence of Dr Ryder.²³

- 8.6** The goal of PC7 is to recognise those waterbodies that are the best of the best. It is my understanding that the IHP deliberately adopted screening criteria with a high threshold to help meet this goal, so that the values of those water bodies that passed through were highly likely to be outstanding.²⁴ This approach was to ensure an objective, transparent, and consistent assessment took place, while minimising subjective judgement in their decision making as much as possible. It will also help with those same factors in future in the event other water bodies are considered for inclusion through future plan changes.
- 8.7** The IHP discusses the development of the screening criteria in their decision report.²⁵ They applied these criteria to the 38 OWB within the notified version of PC7 to identify those that were genuinely outstanding. The IHP assessment was informed by the detailed summary of values report compiled for each of the 38 water bodies,²⁶ and information set out in submissions, expert opinions, and lay evidence.
- 8.8** Currently, PC7 requires a water body to meet both the screening criteria for the relevant value set (Step 1) and the definition of 'outstanding' set out in PC7 (Step 2) before being added to Part 2 of Schedule 25. The threshold within the screening criteria for the relevant value set determines the types of water bodies that will pass through this initial screening stage.
- 8.9** Adjusting the thresholds in the screening criteria influences the subjectivity in Step 2, whereby:
- a) A more lenient threshold leads to a greater frequency of water bodies with similar values passing through. This, in turn, increases the subjectivity

22 Water Conservation Order Review: Outstanding Values: Key Features, For: Community Environment Fund - Outstanding Freshwater Bodies Project By Ministry for the Environment, Auckland Council, and Hawke's Bay Regional Council, September 2020 [\[\[501.1345\]\]](#).

23 Statement of Evidence of Greg Ryder, 11 August 2023, at [5.2]–[5.13] [\[\[301.0193\]\]](#)–[\[\[301.0196\]\]](#).

24 Decision Report of the Independent Hearing Panel, June 2021, at [6.1] [\[\[101.0453\]\]](#).

25 Decision Report of the Independent Hearing Panel, June 2021, at [3.47]–[3.73] [\[\[101.0426\]\]](#)–[\[\[101.0433\]\]](#).

26 Summary of Values Reports, August 2020, [\[\[102.0082\]\]](#)–[\[\[102.1177\]\]](#).

applied in Step 2 where the decision maker needs to determine, out of the pool of water bodies with similar values, those that are “conspicuous, eminent, and/or remarkable in the context of the Hawke’s Bay Region” (i.e. the best of the best) and warrant an outstanding status.

- b) A stricter threshold reduces the frequency of water bodies with similar values passing through, decreasing the subjectivity in Step 2 during decision making.

8.10 The IHP set a threshold in the screening criteria at a level where only those water bodies highly likely to be outstanding would pass through. This signals to plan users that if a water body meets the criteria, it is highly likely to be outstanding. Conversely, a low threshold in the screening criteria communicates to plan users that a water body passing through the criteria may or may not signify an outstanding status. My view is that it is appropriate for the screening criteria to be set at a high threshold so that subjective influence from decision makers is minimised. This provides more clarity for plan users.

8.11 Since the decisions version of PC7, I have adopted changes to the screening criteria to align with parties’ requests where I consider this to be appropriate with reference to the technical evidence and my assessment in accordance with the approach outlined in the paragraph above. I set out three versions of the screening criteria to parties in the 26 October 2023 memo, which includes the version decided by the IHP, HBRC’s 13 July 2023 version, and recommended changes put forward in the geology, ecology, and cultural JWS.²⁷ The HBRC rebuttal version of the provisions in Appendix A to my rebuttal evidence incorporates the latest wording of the screening framework that I am supporting. In some respects, it reflects the 13 July 2023 version, and in other respects it adopts or updates wording that has arisen out of the joint witness statements, feedback from the parties, and subsequent rebuttal evidence.

8.12 Section 32AA of the RMA requires that any changes made to a proposed Plan Change during the hearing of evidence and submissions must be considered under

²⁷ Memo to parties with questions to assist with potential amendments to OWB screening framework as directed by the planning Joint Witness Statement, 26 October 2023, at Attachment 2 [\[\[401.0040\]\]](#).

s32(1) to (4) inclusive. The IHP considered the introduction of the screening criteria at paragraphs 3.71 to 3.73 and in Section 4 of the PC7 decision report.²⁸

9. Schedule 25 OWB identification screening criteria – wording

9.1 The responses from parties on November 2023 contained a wide range of suggestions for amendments to the screening criteria, including some that went beyond the scope of the questions asked.²⁹ For completeness, all responses have been addressed below.

9.2 I have made the following comments on the issues raised by the technical experts and various parties within the context of the agreement set out by the planners in Paragraph 8.1(a)–(c), on a value set by value set basis.

9.3 In light of the differing perspectives on the framework’s wording, the following section (in conjunction with the recap above) aims to clarify the screening criteria’s origins, set out the changes in HBRC’s version of PC7,³⁰ and address concerns raised in the JWS. I also discuss any changes in the thresholds between the three versions below.

9.4 For clarification, if a specific value set or criteria is not mentioned below, it indicates that no feedback was received on that aspect.

Schedule 25 - initial introduction paragraph

9.5 Part 1 of the screening criteria in the 13 July 2023 version reads “.....*To qualify as outstanding, a water body must at least clearly and unambiguously meet the screening criteria for the relevant value set and the definition of ‘outstanding’....*”.³¹

28 Decision Report of the Independent Hearing Panel, June 2021, at [3.71]–[3.73] [\[\[101.0433\]\]](#) and [4]–[4.19] [\[\[101.0436\]\]](#)–[\[\[101.0438\]\]](#).

29 Responses from parties on the memo sent on 26/10/2023 with questions to assist with potential amendments to OWB screening framework as directed by the planning Joint Witness Statement, November 2023, [\[\[401.0044\]\]](#).

30 HBRC preferred version of PC7 as at 13 July 2023, [\[\[501.1538\]\]](#).

31 HBRC preferred version of PC7 as at 13 July 2023, at 21 [\[\[501.1558\]\]](#).

- 9.6 Forest and Bird have raised the following concerns with respect to the introduction paragraph:³²
- (a) The requirement to be clearly and unambiguously outstanding is a higher test than outstanding.
 - (b) The uncertainty around the populations of some species makes it extremely difficult to show that the numeric thresholds are "clearly and unambiguously" met.
- 9.7 I refer to page 55 of the PC7 decision where the IHP confirmed that *"to qualify as outstanding a water body must clearly and unambiguously meet at least one of the screening criteria"*.³³
- 9.8 The planning experts support the terms 'clearly' and 'unambiguously' as used by the IHP, as stated in section 5.1 of the JWS.³⁴ I remain in agreement with this conclusion. In my view, decision makers should be provided with robust evidence that clearly supports the claimed outstanding feature(s), particularly given the high standard of protection that comes with an OWB status. I therefore continue to support the wording of the introduction set out in paragraph 9.5 above.

Screening criteria modifications: Ecology value set

- 9.9 The IHP included criteria for the ecology value set in the PC7 decisions version based on the WCO review findings.³⁵
- 9.10 In the 13 July 2023 version, amendments were made to List A(a) and List A(b) criteria for aquatic birds, native fish, and indigenous plants values sets.³⁶ The reasons for the changes are set out in Dr Hicks' EIC.³⁷ Key changes included replacing

32 Decision Report of the Independent Hearing Panel, June 2021, at [6.1(a)] [\[\[101.0453\]\]](#).

33 Responses from parties on the memo sent on 26/10/2023 with questions to assist with potential amendments to OWB screening framework as directed by the planning Joint Witness Statement, November 2023, at 15 [\[\[401.0058\]\]](#).

34 Joint Witness Statement of Planning Experts, 16 October 2023, at [5.1] [\[\[401.0015\]\]](#).

35 Water Conservation Order Review: Outstanding Values: Key Features, For: Community Environment Fund - Outstanding Freshwater Bodies Project By Ministry for the Environment, Auckland Council, and Hawke's Bay Regional Council, September 2020, at [18]–[41] [\[\[501.1355\]\]](#)–[\[\[501.1357\]\]](#), [43]–[75] [\[\[501.1357\]\]](#)–[\[\[501.1360\]\]](#) and [109]–[149] [\[\[501.1363\]\]](#)–[\[\[501.1366\]\]](#).

36 HBRC preferred version of PC7 as at 13 July 2023, at 21 [\[\[501.1558\]\]](#).

37 Statement of Evidence of Andrew Hicks, 11 August 2023 [\[\[301.0050\]\]](#).

the IHP's threshold of 'one of the highest' with 'regionally unique', a population threshold of 5% and a new ecology sub-value set were also added.

- 9.11** At paragraphs 2.15–2.27 of his rebuttal, Dr Hicks confirmed, in his view, the use of a 'regionally unique' threshold in HBRC's 13 July 2023 version is stricter than the IHP's threshold of 'one of the highest', with the other amendments maintaining the similar high threshold used by the IHP.³⁸

Reasons for modification of regionally unique - List A(a) of ecology value set - aquatic birds & native fish

- 9.12** The ecology JWS found the implications of using a threshold of 'regionally unique' to be excessively onerous given it means only one.³⁹ The ecology JWS suggested replacing unique with the phrase 'only one or two water bodies like it'.⁴⁰

- 9.13** The strict interpretation of this phrase was identified as problematic in the planning JWS because it simply requires a water body to be sufficiently different in its assemblage to pass through the screening criteria. This could result in waterbodies being tested at a significantly lower threshold than that used by the IHP which refers to 'one of the highest', which indicates a threshold of good quality.

- 9.14** I refer to the rebuttal evidence of Dr Hicks who therefore suggests replacing 'regionally unique' with 'unsurpassed in the region' in List A(a) of the 13 July version for the aquatic birds and native fish value sets.⁴¹ I agree with Dr Hicks who notes at paragraph 2.25 of his rebuttal that the term 'unsurpassed' is consistent with being "conspicuous, eminent and/or remarkable", and also provides a clear quantitative threshold and direction that any sites need to be at least 'equal best' to pass the screening criterion.⁴²

38 Rebuttal Statement of Evidence of Andrew Hicks, 11 August 2023, at [2.15]–[2.27] [\[\[301.0099\]\]](#)–[\[\[301.0101\]\]](#).

39 Joint Witness Statement of Ecology Experts, 10 October 2023, at [9] [\[\[401.0006\]\]](#).

40 Joint Witness Statement of Ecology Experts, 10 October 2023, at [4] [\[\[401.0005\]\]](#).

41 Rebuttal Statement of Evidence of Andrew Hicks, 23 November 2023, at [2.26]–[2.27] [\[\[301.0101\]\]](#).

42 Rebuttal Statement of Evidence of Andrew Hicks, 23 November 2023, at [2.25] [\[\[301.0101\]\]](#).

9.15 Several parties also provided suggestions for potential amendments to List A(a) to address this concern, as follows:⁴³

- TToH suggests List A(a) be amended to read *“Is either regionally unique or only has one or two other waterbodies like it in terms of diversity, abundance, or distinctiveness within the region”*.
- Forest and Bird were comfortable with a reversion to “one of the highest” in List A(a) noting they did not consider “unique” or “one or two like it” to be appropriate.

9.16 For the reasons discussed above, I agree with Forest and Bird that ‘unique’ or ‘one or two like it’ are not appropriate for inclusion in List A(a).

9.17 With respect to whether List A(a) should refer to ‘unsurpassed’ or ‘one of the highest’, I consider that ‘unsurpassed’ has a similar quality to ‘one of the highest’, but does not carry the same level of ambiguity. I agree with Dr Hicks that the use of ‘unsurpassed’ provides a clear quantitative threshold and makes it clear that the waterbody must be excellent quality for the attributes listed, but is less onerous than ‘unique’ by allowing water bodies that are similarly excellent to pass through the screening criteria.⁴⁴ In my opinion ‘one of the highest’ is not as clear which leads me to prefer the use of ‘unsurpassed’ in List A(a). I therefore support Dr Hicks’ suggestion.

9.18 In my opinion, the use of ‘unsurpassed’ in List A(a) of the aquatic birds and native fish value sets best aligns with the screening framework’s intent as agreed by the planners in Paragraph 8.1(a)–(c), and maintains the same high threshold as that used by the IHP.

Reasons for changes to 5% population threshold - List A(b) of ecology value set - aquatic birds & native fish

⁴³ Responses from parties on the memo sent on 26/10/2023 with questions to assist with potential amendments to OWB screening framework as directed by the planning Joint Witness Statement, November 2023, at 3 [\[\[401.0046\]\]](#) and 14 [\[\[401.0057\]\]](#).

⁴⁴ Rebuttal Statement of Evidence of Andrew Hicks, 23 November 2023, at [2.25] [\[\[301.0101\]\]](#)

9.19 In their conferencing, the ecology experts highlighted concerns with the 5% national population threshold, as raised by Mr Cheyne in section 4 of his evidence.⁴⁵ The ecology experts agreed the 5% population threshold to be too onerous and lacking regional relevance.⁴⁶

9.20 The 5% population threshold was not used by the IHP, who instead used a threshold of “one of the highest”.⁴⁷

9.21 Several parties provided suggestions for potential amendments to List A(b) to address this concern, as follows:

- Genesis Energy has requested the 5% threshold be retained on the basis this is established in WCO case law.⁴⁸
- TToH considered the 5% threshold had merit due to its use in WCOs, and noted a 15% threshold could be acceptable, particularly for birds. TToH raised a concern that the 15% threshold may be difficult for locals to assess for fish counts due to a lack of monitoring. TToH suggested using both thresholds, but not requiring the waterbody to meet both, just one.⁴⁹
- Forest and Bird supported the inclusion of a yes/no test based on both regional and national numerical thresholds.⁵⁰

9.22 I refer to the rebuttal evidence of Dr Hicks who suggests rewording List A(b) for the aquatic birds and native fish value sets to read:⁵¹

“Supports 15% or more of the regional population and 2% or more of the national population of a particular native...species listed as Nationally Critical, Nationally Endangered or Nationally Vulnerable....”

45 Statement of Evidence of John Cheyne, 1 September 2023, at [4]–[4.17] [\[\[303.0039\]\]](#)–[\[\[303.0043\]\]](#).

46 Joint Witness Statement of Ecology Experts, 10 October 2023, at [7] [\[\[401.0005\]\]](#).

47 Proposed Plan Change 7 – Decisions Version, 26 June 2021, at 22 [\[\[101.0558\]\]](#).

48 Responses from parties on the memo sent on 26/10/2023 with questions to assist with potential amendments to OWB screening framework as directed by the planning Joint Witness Statement, November 2023, at 16 [\[\[401.0059\]\]](#).

49 Responses from parties on the memo sent on 26/10/2023 with questions to assist with potential amendments to OWB screening framework as directed by the planning Joint Witness Statement, November 2023, at 3 [\[\[401.0046\]\]](#) and 4 [\[\[401.0047\]\]](#).

50 Responses from parties on the memo sent on 26/10/2023 with questions to assist with potential amendments to OWB screening framework as directed by the planning Joint Witness Statement, November 2023, at 14 [\[\[401.0057\]\]](#).

51 Rebuttal Statement of Evidence of Andrew Hicks, 23 November 2023, at [2.12] [\[\[301.0098\]\]](#).

9.23 Dr Hicks has confirmed, in his view, these amendments maintain the same high threshold as the original List A(b) used by the IHP.⁵² In my view Dr Hicks' suggested wording addresses the concerns of all parties as well as possible while retaining the high threshold with regional relevance. The changes are also consistent with the findings of the Joint Witness Statement of ecology experts.⁵³

9.24 Therefore, in my opinion, this amendment best aligns with the framework's intent as agreed by the planners in Paragraph 8.1(a)–(c) and maintains the same high threshold as that used by the IHP.

Screening criteria modifications: Cultural and spiritual (tāngata whenua) value set

9.25 The following two paragraphs provide an overview of the key changes that have been made to this value set since the decisions version of PC7 was released.

9.26 The IHP included criteria for the cultural and spiritual value set in the PC7 decisions version based on the WCO review findings.⁵⁴ It is my understanding the IHP modified the criteria to ensure the cultural and spiritual value set aligned with the concept of outstanding within a regional context,⁵⁵ as opposed to the national context discussed in the WCO review.

9.27 List A(a) and (b) of the decisions version were amended in HBRC's 13 July 2023 version with further amendments subsequently suggested at expert conferencing. Key changes included:

- removing the necessity for features to hold outstanding value to wider iwi and hapū groups within the region from List A(b).
- removing the necessity for descendant groups most closely associated with the water body to acknowledge the features of the water body as outstanding in List A(b).

52 Rebuttal Statement of Evidence of Andrew Hicks, 23 November 2023, at [2.11] [\[\[301.0098\]\]](#).

53 Joint Witness Statement of Ecology Experts, 10 October 2023, at [6] - [8] [\[\[401.0005\]\]](#).

54 Water Conservation Order Review: Outstanding Values: Key Features, For: Community Environment Fund - Outstanding Freshwater Bodies Project By Ministry for the Environment, Auckland Council, and Hawke's Bay Regional Council, September 2020, at [150]–[192] [\[\[501.1367\]\]](#)–[\[\[501.1372\]\]](#).

55 Decision Report of the Independent Hearing Panel, June 2021, at [3.55] [\[\[101.0427\]\]](#).

- introducing te ao Māori values into List A(b).
- Removing the necessity for more than one feature to be outstanding.

9.28 Each of these changes and associated reasons are discussed below.

Reasons for changes to List A(a) of cultural value set: features of outstanding value to more than one iwi and hapū group

Overview of changes to List A(a)

9.29 List A(a) in the PC7 decisions version reflects the findings set out in paragraphs 173 to 185 of the WCO review.⁵⁶ HBRC suggested changes to List A(a) in the 13 July 2023 version (in red), with further amendments suggested in conferencing (in blue):

- a) ~~The features are of outstanding value to wider iwi and hapū groups of the region.~~ The features ~~are~~ ~~is~~ acknowledged as having conspicuous, eminent, and/or remarkable cultural and spiritual values in the context of the Hawke’s Bay region.

Overview of reasons for changes to List A(a)

9.30 Mr Coffin sets out the reasons for the changes to List A(a) at paragraphs 6.8 to 6.16 of his EIC and section 2 of his rebuttal. In particular, Mr Coffin highlights his concern that:

- List A(a) as adopted by the IHP functions as a veto, whereby if an iwi group (who does not have a traditional interest in the water body) decides not to participate for any reason, it would have a detrimental impact on whether an outstanding status could be considered for a water body.⁵⁷
- List A(a) in the 13 July 2023 version does not allow for one feature to be identified as outstanding for this value set.⁵⁸

⁵⁶ Water Conservation Order Review: Outstanding Values: Key Features, For: Community Environment Fund - Outstanding Freshwater Bodies Project By Ministry for the Environment, Auckland Council, and Hawke's Bay Regional Council, September 2020 [\[\[501.1345\]\]](#).

⁵⁷ Statement of Evidence of Antoine Coffin, 11 August 2023, at [6.11] [\[\[301.0017\]\]](#).

⁵⁸ Rebuttal Statement of Evidence of Antoine Coffin, 23 November 2023, at [2.3] [\[\[301.0033\]\]](#).

How was List A(a) formulated and applied by the IHP?

9.31 In light of the cultural JWS and responses from parties to the memo, I have re-examined paragraphs 172 to 185 of the WCO review report and the IHP's decision to understand how List A(a) was formulated and applied within the context of the PC7 decision. In terms of how the list was applied, I note that in determining Te Whanganui a Orotū (Ahuriri Estuary) had outstanding cultural and spiritual values the IHP:⁵⁹

- used relevant information from the Summary of Values report,⁶⁰ submitter feedback, and expert evidence to evaluate the Ahuriri Estuary water body against List A(a) of the screening criteria.
- referred to the significance of the Ahuriri Estuary and its customary linkages to three Treaty settlement entities Te Whanganui-a-Orotū, Ahuriri Hapū, Ngāti Pāhauwera and Maungaharuru-Tangitū, noting its long history of settlement, battles, archaeological evidence, mahinga kai, its presence in waiata, stories, narratives, proverbs, and its guardian Moremore who is a descendant of the sea taniwhā Tangaroa.
- noted during the development of PC7 the Ngāti Pāhauwera Development Trust voiced its opposition and abstained from the PC7 process,⁶¹ but proceeded with an-outstanding status for Ahuriri Estuary.

9.32 In my view the above example indicates that the IHP did not intentionally impose a requirement to obtain explicit support from all iwi and hapū groups within the region, and did not apply List A(a) in such a manner in its PC7 decision. In my view it is an issue with the wording chosen by the IHP for List A(a), as identified by Mr Coffin, rather than its intent.⁶²

9.33 Through List A(a), it appears that the IHP sought to introduce a regional context threshold and convey to plan users that the features must be significant to a large number of people, or more than one iwi / hapū group, rather than exclusively for one iwi/hapū in a localised sense. To confirm the regional context threshold was met, the IHP relied on a range of existing information, such as that set out in the

59 Decision Report of the Independent Hearing Panel, June 2021, at [6.121]–[6.132] [\[\[101.0469\]\]](#)–[\[\[101.0470\]\]](#).

60 Ahuriri Estuary Summary of Values, August 2020, [\[\[102.0082\]\]](#).

61 Decision Report of the Independent Hearing Panel, June 2021, at [6.62] [\[\[101.0461\]\]](#).

62 Statement of Evidence of Antoine Coffin, 11 August 2023, at [6.11] [\[\[301.0017\]\]](#).

summary of values reports,⁶³ and information provided as part of submissions, rather than requiring written confirmation from all iwi groups. In my view this regional context threshold has been maintained in List A(a) in both the 13 July 2023 and conferencing versions, but could benefit from some amendments to provide increased clarity for plan users and decision makers around exactly what this threshold is. In his rebuttal, Mr Coffin advised that the most appropriate way to achieve this is through development of guidelines with tāngata whenua which would clearly set out what makes a cultural and spiritual value conspicuous, eminent and/or remarkable on a regional basis.⁶⁴

Reasons for changes to List A(b) of cultural value set: descendant groups most closely associated with the water body

Overview of changes to List A(b)

- 9.34** List A(b) in the PC7 decisions version was based on the findings of the WCO review,⁶⁵ and requires the features of the water body to be recognised as outstanding by the descendant groups most closely associated with the water body. HBRC suggested changes to List A(b) in the 13 July 2023 version (in red), with further amendments put forward through conferencing (in blue):

The features ~~are~~ ~~is~~ ~~acknowledged~~ as outstanding, in accordance with te ao Māori values, mātauranga Māori, and tikanga by ~~the~~ a descendant groups ~~most~~ closely associated with the water body.

Overview of reasons for changes to List A(b)

- 9.35** Mr Coffin sets out the reasons for these changes in his EIC and his rebuttal.⁶⁶ In his view, while List A(b) in the cultural JWS and 13 July 2023 version is more lenient than the version used by the IHP, Mr Coffin prefers this wording as it acknowledges the right of one descendant hapū group to propose an outstanding water body and

63 Summary of Values Reports, August 2020 [[102.0082]]–[[102.1177]].

64 Rebuttal Statement of Evidence of Antoine Coffin, 23 November 2023, at [2.11] [[301.0035]] and [2.13] [[301.0036]].

65 Water Conservation Order Review: Outstanding Values: Key Features, For: Community Environment Fund - Outstanding Freshwater Bodies Project By Ministry for the Environment, Auckland Council, and Hawke's Bay Regional Council, September 2020, at [164]–[171] [[501.1369]]–[[501.1370]].

66 Statement of Evidence of Antoine Coffin, 11 August 2023, at [6.8]–[6.12] [[301.0016]]–[[301.0017]]; and Rebuttal Statement of Evidence of Antoine Coffin, 23 November 2023, at [2.2]–[2.13] [[301.0033]]–[[301.0036]].

allow it to pass through the screening criteria without the concern of a veto from another descendant group.

9.36 Mr Coffin further indicates that while in his view this will result in a higher number of water bodies passing through the criteria (Step 1) due to nominations by hapū groups, he does not believe this will result in more water bodies being added to Schedule 25 for this value set, noting *“even when a water body passes those criteria, there must still be an evaluation of whether the water body meets the definition of outstanding”*.⁶⁷ This is Step 2 which I have described in Paragraph 8.8 of my rebuttal.

9.37 At paragraph 2.9, Mr Coffin qualifies these comments by acknowledging that a good number of iwi and hapū did nominate OWBs in the development of PC7, referring to the notified version of PC7 that identified 38 water bodies in Hawke’s Bay with outstanding cultural and spiritual values.⁶⁸ I understand these comments to mean that while these same 38 water bodies may pass through the screening criteria most are unlikely to meet the definition of outstanding and would therefore not be accorded an OWB status.

9.38 I note that due to these changes, there is a slight grammatical error, and that ‘by’ should be replaced by ‘of’. I have recommended this in the Appendix A to this statement and discussed this change with Mr Coffin.

How was List A(b) formulated and applied by the IHP?

9.39 In light of the cultural JWS and responses from parties to the memo, I have re-examined paragraphs 164 to 171 of the WCO review report and the IHP’s decision to understand how List A(b) was formulated and applied within the context of the PC7 decision. I agree with the findings of Mr Coffin set out above and, in my view, the IHP applied List A(b) in a manner whereby if two descendant groups disagreed, an OWB status was not awarded.

⁶⁷ Rebuttal Statement of Evidence of Antoine Coffin, 23 November 2023, at [2.7]–[2.8] [\[\[301.0034\]\]](#)–[\[\[301.0035\]\]](#).

⁶⁸ Rebuttal Statement of Evidence of Antoine Coffin, 23 November 2023, at [2.9] [\[\[301.0035\]\]](#).

Conclusion on effect of changes to cultural value set

9.40 The process described by Mr Coffin is similar to that described in paragraph 8.9(a) of my rebuttal, whereby the lower the threshold the higher number of water bodies with similar values will pass through the screening criteria (Step 1), but may or may not be deemed to be conspicuous, eminent, and/or remarkable in a regional context by a decision maker and added to Schedule 25 (Step 2). The cultural value set is different to the way in which the screening criteria operates for the other value sets. The process for the other value sets is similar to that described in paragraph 8.9(b) of my rebuttal, whereby a higher threshold means that a smaller number of water bodies with similar values will pass through Step 1 of the criteria. A higher threshold in Step 1 reduces the level of subjectivity applied in Step 2 by the decision maker when identifying those that are ‘conspicuous, eminent, and/or remarkable in the context of the Hawke’s Bay Region’ (i.e. the best of the best) and warrant an outstanding status.

9.41 While the amendments suggested by the cultural JWS creates a different process for this value set from what the IHP intended when they adopted the screening criteria, I consider these changes are appropriate based on the findings of Mr Coffin stated in his rebuttal evidence. It is my view that the amendments suggested by the cultural JWS are the most appropriate way to identify those water bodies in Hawke’s Bay with outstanding cultural and spiritual values, subject to several amendments for plan clarity (see below) to ensure it is clear what the threshold is in List A(a) and to outline the difference in the screening criteria when applied to the cultural and spiritual value set versus the other value sets:

- **Amend Part 1 of Schedule 25 to read**
- *“...To qualify as outstanding, a water body must:*
 - i. *at least clearly and unambiguously meet the screening criteria for the relevant value set; and*
 - ii. *meet the definition of ‘outstanding’ set out in this Plan¹³.*

Assessing whether a value(s) of the water body meets the definition of ‘outstanding’

This assessment will be an exercise of judgment informed by the application of the Identification Screening Criteria, the value being assessed, and the evidence provided.

For the ecology, recreation, landscape, natural form and character value sets, the screening criteria has been set at a high threshold whereby the water bodies that pass through are more likely to then meet the definition of outstanding and be accorded an outstanding status.

For the cultural and spiritual value set, the screening criteria has been set at a lower threshold and water bodies that pass through the screening may or may not meet the definition of 'outstanding' in this plan.

Water bodies that do not meet the definition of outstanding will not be accorded an outstanding status."

Screening criteria modifications: Natural character and geology value sets

9.42 Mr Kay's evidence for Forest and Bird raised concerns about the lack of recognition for braided river character in either the geology or natural character value sets.⁶⁹ As a result, the geology experts discussed this in conferencing. The geology JWS highlighted a need to include a pathway for intact braided rivers in modified surrounds to qualify as having outstanding natural character value.⁷⁰

9.43 Several parties provided suggestions for potential amendments to the natural character and geology value sets to address these concerns. These are set out in the responses to my memo sent in October and summarised below.

- Forest and Bird supported combining the geology and natural character value sets and amending the title to Natural Form and Character to more closely reflect the NPSFM 'natural form and character' value to provide for natural character, geology, and geomorphology.⁷¹
- TTOH requested that if the geology and natural character value sets were combined that 'geology' be retained in the title to ensure the hydrological aspects of geology are able to be considered as outstanding value. TTOH

⁶⁹ Statement of Evidence of Thomas Kay, 1 September 2023, at [27] [[303.0007]].

⁷⁰ Joint Witness Statement of Geology Experts, 9 October 2023, at [1] [[401.0001]].

⁷¹ Responses from parties on the memo sent on 26/10/2023 with questions to assist with potential amendments to OWB screening framework as directed by the planning Joint Witness Statement, November 2023, at 14 [[401.0057]].

also suggested the reference to the New Zealand Geopreservation Index in the screening criteria be removed.⁷²

- Genesis supported combining the geology and natural character value sets to reduce duplication. Genesis considered that the Geopreservation Inventory is necessary to maintain the high threshold, as rivers can be recognised for braided river character under the natural character value set.⁷³

9.44 I refer to the rebuttal evidence of Mr Rekker who suggests combining the geology natural character value set under a new title Natural Form and Character as follows.⁷⁴

Natural <u>Form and</u> Character	<p>Natural <u>Form and</u> Character</p> <p>For a water body to have has outstanding natural <u>form and/or natural</u> character values where it must</p> <p>Meets:</p> <ul style="list-style-type: none"> • <u>At least one matter in List A</u> • all matters in List <u>B A</u>. <p>List A</p> <p>a) The water body is highly natural with little or no human modification, including to the flow, bed and riparian margins, water quality, flora and fauna, within a largely indigenous landscape.</p> <p>b) <u>The water body is a braided river that is highly natural with little or no human modification, including to the flow, bed and riparian margins, water quality, flora and fauna.</u></p> <p>c) <u>The water body is classified as Class A on the New Zealand Geopreservation Inventory.</u></p> <p>List B</p> <p>a) <u>The values are dependent on the water body's condition and functioning.</u></p> <p>b) The natural <u>form and/or</u> character values are conspicuous, eminent and/or remarkable in the context of the Hawke's Bay Region.</p> <p>c) Evidence is provided in support of outstanding natural character values by way of an expert assessment or independent evidence sources.</p>
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9.45 In my view, the changes proposed in Mr Rekker’s rebuttal statement are an appropriate response to the comments made by all parties who have an interest in the screening criteria. These amendments maintain the same high threshold as that used by the IHP while providing a pathway for intact braided rivers in modified surrounds to qualify as having outstanding natural character values. These

72 Responses from parties on the memo sent on 26/10/2023 with questions to assist with potential amendments to OWB screening framework as directed by the planning Joint Witness Statement, November 2023, at 4 [\[\[401.0047\]\]](#).
73 Responses from parties on the memo sent on 26/10/2023 with questions to assist with potential amendments to OWB screening framework as directed by the planning Joint Witness Statement, November 2023, at 17 [\[\[401.0060\]\]](#).
74 Rebuttal Statement of Evidence of Jens Rekker, 23 November 2023, at [3.3] [\[\[301.0154\]\]](#).

amendments reduce duplication across the value set and address the concerns raised in the geology JWS.

9.46 Mr Rekker considers that these amendments are appropriate and better reflect the outstanding attributes of Hawke’s Bay water bodies.⁷⁵ Therefore, in my opinion, this amendment best aligns with the framework’s intent as agreed by the planners in paragraph 8.1(a) and (b) above and maintains the same high threshold as that used by the IHP. As a consequence, the definition of ‘outstanding water body’ should be amended to read:

“Outstanding water body means freshwater bodies and estuaries, or parts thereof, identified in Schedule 25 that have one or more outstanding cultural, spiritual, recreational, landscape, geology, natural form and character or ecologically value(s), or those water bodies identified as having one or more outstanding values in a water conservation order.”

Screening criteria modifications: proposed new value set titled ‘Aquifers and aquifer systems’

9.47 Mr Black has requested the addition of a new value set titled ‘Aquifers and aquifer systems’ to the screening criteria in paragraph 42 of his rebuttal as follows.⁷⁶ I note that Mr Rekker, Dr Hicks, and Mr Coffin have not had a chance to undertake anything more than a preliminary review of this new value set for aquifers. This is a new request and associated details were provided on 22 November 2023 the day before rebuttal from all parties involved in PC7 was due to be filed with the Court.

Aquifers and aquifer systems’	Aquifers and aquifer systems’
	<p>For an aquifer to have outstanding values, it must meet all matters in List A</p> <p>List A</p> <p>a) The aquifer or aquifer system must be unique or outstanding compared to other aquifers/aquifer systems in the region, from an ecological, hydrological, cultural/spiritual or natural character perspective.</p>

75 Rebuttal Statement of Evidence of Jens Rekker, 23 November 2023, at [6.1] [\[\[301.0157\]\]](#).

76 Rebuttal Statement of Evidence of Maurice Black, 22 November 2023, at [42] [\[\[302.0092\]\]](#).

	b) The aquifer/aquifer system is within the top two aquifer systems in the context of the Hawke's Bay region.
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9.48 In the following section I discuss aquifer systems; whether any aquifer systems have been identified as outstanding nationally for NPSFM purposes; and Mr Black's proposed criteria.

Overview of aquifer systems

9.49 My understanding from Mr Rekker and the secondary assessments undertaken as part of the PC7 development process is that:⁷⁷

- aquifer systems are water bearing layers of rock or sediment beneath the ground through which water can flow. An aquifer system typically refers to a collection of interconnected aquifers. They are inherently hard to delineate, even when there is extensive geological mapping and bore data.
- all aquifer systems are living ecosystems home to various unseen ecological communities. An aquifer ecosystem itself, as well as those surface water ecosystems connected to the aquifer, have intrinsic value, are biologically diverse, and provide important ecosystem functions, such as water purification and flood control.

9.50 There are nine known productive aquifer systems in Hawke's Bay,⁷⁸ with the Heretaunga and Ruataniwha aquifer systems being the largest and of clear economic importance to the region. It is my understanding that there are confined aquifer systems in Hawke's Bay as well, however I am not aware of any investigations that have occurred on aquifers in Hawke's Bay that do not have an associated productive use.

9.51 While the NPSFM allows the inclusion of aquifers as outstanding water bodies, it is my understanding that to date nationally, no aquifers have been identified as outstanding water bodies for NPSFM or WCO purposes unless that aquifer system

⁷⁷ Heretaunga Aquifer Summary of Values, August 2020, [\[\[102.0141\]\]](#); and Ruataniwha Aquifer Summary of Values, August 2020 [\[\[102.0801\]\]](#).

⁷⁸ Heretaunga, Ruataniwha, Mahia, Nuhaka, Wairoa, Esk, Poukawa, Papaiuki and Waipukurau/Waipawa; <https://www.hbrc.govt.nz/environment/aquifers/>

is a supporting feature to an outstanding value located within a connected karst system or surface water body.

Pathway for aquifer systems under the 13 July 2023 version of the screening criteria

9.52 Under the decisions version and the HBRC 13 July 2023 version of PC7, in order to be recognised as an OWB an aquifer system must have a cultural and spiritual, recreational, landscape, natural character, geological or ecological value that meets the relevant screening criteria and the definition of outstanding in PC7. I note economic and consumptive use values are deliberately excluded from being identified as outstanding values through the PC7 definition of OWB. The 17 January version of the screening criteria contained in Appendix A maintains these pathways for an aquifer system in Hawke’s Bay to pass through. The main pathways are the cultural and spiritual value set, karst system / subterranean waters value set, and the natural form and character value set. In my view a standalone value set is not needed within the screening criteria for aquifer systems in addition to these pathways.

Screening criteria proposed by Mr Black for the new value set ‘Aquifers and aquifer systems’

9.53 In my view, the screening criteria currently has a pathway for aquifers to be OWB through the cultural and spiritual, karst system/subterranean waters, and natural form and character value sets. In my view, it is not clear on reading the new screening criteria, suggested by Mr Black, what aquifers are to be recognised for, and how a threshold would be created to identify the ‘best of the best’. Notwithstanding, should the Court decide a new value set for aquifers is appropriate, for plan clarity I suggest the screening criteria is amended to provide:

- further information to plan users detailing how one aquifer system should be assessed against another aquifer system. For example what makes an aquifer eligible to be in the “top two aquifers”?⁷⁹ Is it the size of the aquifer system, the associated consumptive uses, the composition of the aquifer system, the number or size of the groundwater dependant surface water bodies or their associated recreation uses, which makes one aquifer superior to other aquifer systems?

79 Exhibit to Maurice Black’s Rebuttal Statement of Evidence, 22 November 2023, at 26 [\[\[302.0122\]\]](#).

- Further information to plan users around detailing what makes an aquifer system unique. No two aquifer systems are the same with the ecology and structure of each system different.
- For consistency with other values sets, the requirement for evidence to be provided in support of outstanding features to be added.

10. AMENDMENTS TO SCHEDULE 25 – NEW OUTSTANDING WATER BODIES.

10.1 I have discussed a number of the requests for additions to Schedule 25 in my EIC,⁸⁰ however I discuss below further requests and comments made in parties' evidence.

Ngaruroro River

Geology value set

10.2 Mr Kay for Forest and Bird requested that the lower Ngaruroro River be recognised for outstanding natural character / geology for its braided river character between the Whanawhana Cableway and the Fernhill Bridge / Omaha.

10.3 In the geology JWS, Mr Rekker agreed that part of the Ngaruroro River is outstanding for its braided character and should be included in Schedule 25.⁸¹ Mr Rekker supported a modified natural character / geology value set (a natural form and character value set) which would better enable the Ngaruroro River to be recognised for its braided river character.⁸² Mr Kay has provided preliminary support for this approach too as set out in Forest and Bird's response to the memo sent by HBRC on 3 November 2023.⁸³ I support the addition of the braided river character of the Ngaruroro River as an outstanding value into Schedule 25 for the reasons set out in Mr Rekker's rebuttal evidence.⁸⁴

10.4 However, I note that Mr Rekker did not consider the entirety of the lower Ngaruroro River from Whanawhana Cableway and the Fernhill Bridge / Omaha to

⁸⁰ Statement of Evidence of Belinda Harper, 11 August 2023, at [13]–[16.5] [\[\[301.0262\]\]](#)–[\[\[301.0270\]\]](#).

⁸¹ Joint Witness Statement of Geology Experts, 9 October 2023, at [2] [\[\[401.0002\]\]](#).

⁸² Rebuttal Statement of Evidence of Jens Rekker, 23 November 2023, at [3.3] [\[\[301.0153\]\]](#).

⁸³ Responses from parties on the memo sent on 26/10/2023 with questions to assist with potential amendments to OWB screening framework as directed by the planning Joint Witness Statement, November 2023, at 14 [\[\[401.0057\]\]](#).

⁸⁴ Rebuttal Statement of Evidence of Jens Rekker, 23 November 2023, at [4.1]–[4.3] [\[\[301.0154\]\]](#).

be outstanding for braided river character. Mr Rekker considered that the reaches of the Ngaruroro River downstream of Maraekakaho not to be outstanding because of the modification related degradation.⁸⁵ I support Mr Rekker’s conclusion and consider that the lower Ngaruroro River can be recognised for outstanding natural form and character except for the reaches of the river downstream of Maraekakaho.

Cultural and spiritual value set

10.5 TToH requested that Ngaruroro River be recognised for outstanding cultural and spiritual values. In conferencing, Mr Coffin considered there to be insufficient evidence to support the inclusion of Ngaruroro River in Schedule 25,⁸⁶ with Mr Apatu and Mr Black confirming that TTOH and others will promote the inclusion of the outstanding cultural and spiritual values of the Ngaruroro River through future planning processes.⁸⁷

10.6 In Mr Coffin’s rebuttal evidence, he noted that the IHP recorded “no specific submissions or evidence that there were outstanding cultural and spiritual values in the Ngaruroro catchment”.⁸⁸ In Mr Coffin’s rebuttal evidence, he considers the evidence provided by Mr Apatu, but notes that “the values associated with Te Karamū are being used “as a proxy for the traditions and association with the Ngaruroro River, particularly in light of the flood of 1867, where the Te Karamu changed part of its course to the flow path of the Ngaruroro”.⁸⁹ In light of this, and given that no further evidence has been provided by TTOH on this matter in rebuttal evidence, I support Mr Coffin’s conclusion that the Ngaruroro River should not be recognised for outstanding cultural and spiritual values. Therefore, on the basis of the PC7 planning framework and that evidence, I conclude that the Ngaruroro River is not regionally outstanding for cultural and spiritual values.

85 Rebuttal Statement of Evidence of Jens Rekker, 23 November 2023, at [4.4] [[301.0155]].

86 Joint Witness Statement of Cultural and Spiritual Experts, 11 October 2023, at [6] [[401.0010]].

87 Joint Witness Statement of Cultural and Spiritual Experts, 11 October 2023, at [9] [[401.0010]].

88 Statement of Evidence of Antoine Coffin, 11 August 2023, at [7.1] [[301.0018]].

89 Rebuttal Statement of Evidence of Antoine Coffin, 23 November 2023, at [4.3] [[301.0038]] and [4.7] [[301.0039]].

Recreational value set

- 10.7** In their notice of appeal TToH requested that the lower Ngaruroro River be added to Schedule 25 for its outstanding jetboating values.
- 10.8** Mr Black states that the lower Ngaruroro River should be recognised for outstanding recreational values – trout angling, trout fishery, kayaking.⁹⁰ Mr Greenaway has considered Mr Black’s statement, but has not seen any data to support a conclusion that lower Ngaruroro River has outstanding recreational values.⁹¹ I agree with Mr Greenaway’s conclusion that the lower Ngaruroro river should not be recognised for outstanding recreational values.

Waitangi Estuary

Cultural and spiritual value set

- 10.9** TTOH requested that Waitangi Estuary be recognised for outstanding cultural and spiritual values. In conferencing, Mr Coffin agreed that based on the evidence provided from Mr Apatu and Mr Black, there was sufficient cultural and spiritual evidence for Waitangi Estuary to be included in Schedule 25.⁹² Mr Coffin refers to Mr Apatu’s evidence and the ancestral connection between Ruawharo of the Takitimu waka, who imbues the Waitangi Estuary with the mauri of his son. Mr Coffin considered that this was substantive new evidence which supported the claims that Waitangi estuary has outstanding cultural / spiritual values in a regional context.⁹³ Mr Coffin has assessed all the evidence to date and concludes that the cultural and spiritual values of Waitangi Estuary meet the JWS version of the screening criteria, and the 13 July 2023 version of the screening criteria. Therefore, I conclude that Waitangi Estuary should be added to Schedule 25 for its outstanding cultural and spiritual values, if the screening criteria is modified to the JWS or 13 July 2023 version.

90 Statement of Evidence of Maurice Black, 28 August 2023, at Table 3 [\[\[302.0060\]\]](#).

91 Rebuttal Statement of Evidence of Robert Greenaway, 23 November 2023, at [1.6]–[1.7] [\[\[301.0186\]\]](#).

92 Joint Witness Statement of Cultural and Spiritual Experts, 11 October 2023, at [5] [\[\[401.0010\]\]](#).

93 Rebuttal Statement of Evidence of Antione Coffin, 23 November 2023, at [4.20]–[4.24] [\[\[301.0041\]\]](#)–[\[\[301.0042\]\]](#).

Karamū River

Cultural and spiritual value set

10.10 TTOH requested that Karamū River be recognised for outstanding cultural and spiritual values. In conferencing, Mr Coffin agreed that based on the evidence provided from Mr Apatu and Mr Black, there was sufficient cultural and spiritual evidence for Karamū River to be included in Schedule 25.⁹⁴ Mr Coffin refers to Mr Apatu's evidence and associations of the Karamū River with Takitimu waka, and ancient stories and traditions. Mr Coffin considered that this was substantive new evidence which supported the claims that Karamū River has outstanding cultural / spiritual values in a regional context.⁹⁵ Mr Coffin has assessed all the evidence to date and concludes that the cultural and spiritual values of Karamū River meet the JWS version of the screening criteria, and the 13 July 2023 version of the screening criteria.⁹⁶ Therefore, I conclude that Karamū River should be added to Schedule 25 for its outstanding cultural and spiritual values if the screening criteria is modified to the JWS or 13 July 2023 version. I note that if the PC7 decisions version of the cultural and spiritual criteria is retained, Mr Coffin has stated in his view the Karamū River will not meet this threshold because he has not seen any written proof that the wider iwi and hapū of the region consider the waterbodies to be outstanding.⁹⁷

Heretaunga Aquifer

10.11 The Heretaunga aquifer system, including peripheral valley aquifers, is around 510 km² in size. Three major surface water bodies, being the Ngaruroro, Tutaekurī and Tukituki rivers, and numerous other smaller rivers and streams flow over and beside the Heretaunga Plains.

10.12 The aquifer system is a significant resource for Hawke's Bay, with 161 million m³ of water consented for domestic, municipal, industrial, horticultural and agricultural use, annually.⁹⁸

94 Joint Witness Statement of Cultural and Spiritual Experts, 11 October 2023, at [5] [\[\[401.0010\]\]](#).

95 Rebuttal Statement of Evidence of Antoine Coffin, 23 November 2023, at [4.19]–[4.29] [\[\[301.0041\]\]](#)–[\[\[301.0043\]\]](#).

96 Rebuttal Statement of Evidence of Antoine Coffin, 23 November 2023, at [4.25]–[4.28] [\[\[301.0042\]\]](#)–[\[\[301.0043\]\]](#).

97 Rebuttal Statement of Evidence of Antoine Coffin, 23 November 2023, at [4.26] [\[\[301.0042\]\]](#).

98 Heretaunga Aquifer Summary of Values, August 2020, at [4] [\[\[102.0154\]\]](#).

Cultural and spiritual value set

- 10.13** TToH requested that Heretaunga Aquifer be recognised for outstanding cultural and spiritual values. In conferencing, Mr Coffin agreed that based on the evidence provided from Mr Tomoana and Mr Black, there was sufficient cultural and spiritual evidence for Heretaunga Aquifer to be included in Schedule 25.⁹⁹ Mr Coffin refers to Mr Tomoana’s evidence of the origins of Heretaunga Aquifer and the belief that Heretaunga Aquifer is the manifestation of Muriwaihou. The cultural and spiritual JWS notes the Heretaunga Plains Aquifer System is spatially defined within the maps in the Hawke’s Bay Regional Resource Management Plan.¹⁰⁰ However, in this regard Mr Coffin notes that the matter of spatial extent of the Heretaunga Aquifer as outstanding needs to be clarified.¹⁰¹
- 10.14** On the basis of the new information provided, Mr Coffin considers that there is now substantive evidence which supports the claims that Heretaunga Aquifer meets the JWS version of the screening criteria, and the 13 July 2023 version of the screening criteria,¹⁰² and has outstanding cultural / spiritual values in a regional context.¹⁰³
- 10.15** Therefore, on the basis of the PC7 planning framework and that evidence, I conclude that:
- Heretaunga Aquifer is regionally outstanding for cultural and spiritual values, if the screening criteria is modified to the JWS or 13 July 2023 version. I note that if the PC7 decisions version of the cultural and spiritual criteria is retained, Mr Coffin has stated in his view the Heretaunga Aquifer will not meet the screening criteria.¹⁰⁴ Based on Mr Coffin’s advice, I consider that if the PC7 decisions version of the cultural and spiritual criteria is retained, then Heretaunga Aquifer will not meet this threshold.
 - For the reasons set out in paragraphs 9.49 to 9.51, mapping those parts of aquifer systems that are outstanding could be a complex task. Given the

99 Joint Witness Statement of Cultural and Spiritual Experts, 11 October 2023, at [5] [\[\[401.0010\]\]](#).

100 Joint Witness Statement of Cultural and Spiritual Experts, 11 October 2023, at [5] [\[\[401.0010\]\]](#).

101 Rebuttal Statement of Evidence of Antoine Coffin, 23 November 2023, at [4.43] [\[\[301.0045\]\]](#).

102 Rebuttal Statement of Evidence of Antoine Coffin, 23 November 2023, at [4.37]–[4.40] [\[\[301.0044\]\]](#).

103 Rebuttal Statement of Evidence of Antoine Coffin, 23 November 2023, at [4.31]–[4.35] [\[\[301.0043\]\]](#)–[\[\[301.0044\]\]](#).

104 Rebuttal Statement of Evidence of Antoine Coffin, 23 November 2023, at [4.38] [\[\[301.0044\]\]](#).

large extent of the aquifer system and its economic importance to the region the addition of the Heretaunga Aquifer with maps will need to be considered under s32(1)–(4) of the RMA. In my view the Section 32AA assessment should consider whether clear and targeted descriptions of the outstanding cultural and spiritual values and their associated extents would assist with plan clarity better than a reference to the Heretaunga Aquifer extent set out in the RRMP, 2006.

Ruataniwha Aquifer

- 10.16** The Ruataniwha aquifer covers an area of approximately 260 km². The Waipawa River, Tukituki River and Makaretu Stream are the three major waterways which flow over the Ruataniwha basin.
- 10.17** The aquifer system is an extremely valuable resource, underlying the Ruataniwha Plains, and is well known due to its productive qualities, for domestic, horticulture and agriculture use.¹⁰⁵

Cultural and spiritual value set

- 10.18** TTOH requested that Ruataniwha Aquifer be recognised for outstanding cultural and spiritual values. In conferencing, Mr Coffin agreed that based on the evidence provided from Mr Apatu and Mr Black, there was sufficient cultural and spiritual evidence for Ruataniwha Aquifer to be included in Schedule 25.¹⁰⁶ Mr Coffin refers to Mr Apatu’s evidence of the origins of Ruataniwha Aquifer through a fight between two taniwha Te Umu o Pua and Awarua o Porirua. The cultural and spiritual JWS notes the Ruataniwha Plains Aquifer System is spatially defined within the maps in the Hawke’s Bay Regional Resource Management Plan.¹⁰⁷ However, in this regard Mr Coffin notes that the matter of spatial extent of the Ruataniwha Aquifer as outstanding needs to be clarified.¹⁰⁸

105 Ruataniwha Aquifer Summary of Values, August 2020, at [4] [\[\[102.0814\]\]](#).

106 Joint Witness Statement of Cultural and Spiritual Experts, 11 October 2023, at [5] [\[\[401.0010\]\]](#).

107 Joint Witness Statement of Cultural and Spiritual Experts, 11 October 2023, at [7] [\[\[401.0010\]\]](#).

108 Rebuttal Statement of Evidence of Antoine Coffin, 23 November 2023, at [4.58] [\[\[301.0048\]\]](#).

10.19 On the basis of the new information provided, Mr Coffin considers that there is now substantive evidence which supports the claims that Ruataniwha Aquifer meet the JWS version of the screening criteria, and the 13 July 2023 version of the screening criteria,¹⁰⁹ and has outstanding cultural / spiritual values in a regional context.¹¹⁰

10.20 Therefore, on the basis of the PC7 planning framework and that evidence, I conclude that:

- Ruataniwha Aquifer is regionally outstanding for cultural and spiritual values, if the screening criteria is modified to the JWS or 13 July 2023 version. I note that if the PC7 decisions version of the cultural and spiritual criteria is retained, Mr Coffin has stated in his view the Ruataniwha Aquifer will not meet the screening criteria.¹¹¹ Based on Mr Coffin's advice, I consider that if the PC7 decisions version of the cultural and spiritual criteria is retained, then Heretaunga Aquifer will not meet this threshold.
- For the reasons set out in paragraphs 9.49 to 9.51, mapping those parts of aquifer systems that are outstanding could be a complex task. Given the large extent of the aquifer system and its economic importance to the region the addition of the Ruataniwha Aquifer with maps will need to be considered under s32(1)–(4) of the RMA. In my view the Section 32AA assessment should consider whether clear and targeted descriptions of the outstanding cultural and spiritual values and their associated extents would assist with plan clarity better than a reference to the Heretaunga Aquifer extent set out in the RRMP, 2006.

Tukituki River and Estuary

Cultural and spiritual value set

10.21 In Mr Black's evidence he stated that the Tukituki River and Estuary is part of a sensitive catchment, and the river was recognised as outstanding in the notified version of PC7.¹¹² Mr Black considered that Tukituki River and Estuary should be

109 Rebuttal Statement of Evidence of Antoine Coffin, 23 November 2023, at [4.53]–[4.56] [\[\[301.0047\]\]](#)–[\[\[301.0048\]\]](#).

110 Rebuttal Statement of Evidence of Antoine Coffin, 23 November 2023, at [4.50]–[4.53] [\[\[301.0046\]\]](#)–[\[\[301.0047\]\]](#).

111 Rebuttal Statement of Evidence of Antoine Coffin, 23 November 2023, at [4.54] [\[\[301.0047\]\]](#).

112 Statement of Evidence of Maurice Black, 28 August 2023, at [6.21]–[6.23] [\[\[302.0042\]\]](#).

recognised as outstanding for PC7.¹¹³ Mr Coffin assessed the information available about Tukituki River, and considered that the IHP's conclusion that the Tukituki River downstream of State Highway 50 bridge including the estuary should be recognised as outstanding, and that the river upstream of that same point should not be recognised as outstanding.¹¹⁴ Mr Coffin considered that no new evidence was provided through conferencing or evidence exchange to support recognised the upstream tract of the Tukituki River as outstanding. Mr Apatu and Mr Black confirmed that TToH and others will promote the inclusion of the outstanding cultural and spiritual values of the Tukituki River through future planning processes.¹¹⁵ I agree with Mr Coffin's conclusion, and on the basis of the PC7 framework and screening criteria, Tukituki River should not be recognised as outstanding for cultural and spiritual values upstream of State Highway 50.

Recreation value set

- 10.22** Mr Black's evidence states that Tukituki River should be recognised for outstanding recreational values.¹¹⁶ Mr Black has not provided any evidence for why the Tukituki River has outstanding recreational values. In addition to that, TTOH did not request that Tukituki River be recognised for outstanding recreational values in their appeal or submission. This and other scope matters will be covered further in the Council's legal submissions.

Ecological value set

- 10.23** Mr Black's evidence states that Tukituki Estuary should be recognised for outstanding ecological values.¹¹⁷ TToH has not provided any evidence for why the Tukituki Estuary should be recognised for outstanding ecological values. I refer to the evidence of Dr Hicks who states he is not aware of any evidence demonstrating indigenous fish habitat is regionally outstanding in Tukituki River (from the headwaters to the coastal environment boundary).¹¹⁸ Due to a lack of evidence, I cannot conclude that Tukituki Estuary meets the PC7 framework.

113 Statement of Evidence of Maurice Black, 28 August 2023, at Table 3 [\[\[302.0060\]\]](#).

114 Statement of Evidence of Antoine Coffin, 11 August 2023, at [7.17]–[7.19] [\[\[301.0021\]\]](#)–[\[\[301.0022\]\]](#).

115 Joint Witness Statement of Cultural and Spiritual Experts, 9 October 2023, at [9] [\[\[401.0010\]\]](#).

116 Statement of Evidence of Maurice Black, 28 August 2023, at Table 3 [\[\[302.0061\]\]](#).

117 Statement of Evidence of Maurice Black, 28 August 2023, at Table 3 [\[\[302.0061\]\]](#).

118 Rebuttal Statement of Evidence of Andrew Hicks, 23 November 2023, at [3.5] [\[\[301.0102\]\]](#).

11. RESPONSES TO TTOH'S REQUESTS IN APPENDIX 1 OF MR BLACK'S REBUTTAL STATEMENT

11.1 On 22 November 2023 Mr Black filed a list of changes to PC7 that TToH prefers.¹¹⁹ The following paragraphs briefly address each requested change.

OBJ LW1.1

11.2 Mr Black has requested Objective LW1 be amended to:¹²⁰

- specify the protection of water quality; and
- refer to freshwater bodies.

11.3 With respect to the reference to water quality, I refer to paragraph 8.4 of my EIC.¹²¹ I further note the majority of Objective LW1 is operative and not part of Plan Change 7, with amendments restricted to Clause 1 to ensure consistency with the NPSFM wording which requires the protection of the significant values of OWB.¹²²

11.4 With respect to the reference to freshwater bodies, this request relates to the issue of principle raised by TToH whereby PC7 defines OWB in a way that encompasses coastal water. I refer to paragraphs 7.3–7.5 of my EIC.¹²³

POL LW1.2

11.5 Mr Black has requested the following clauses of Policy LW1.2 be amended to:¹²⁴

- (b)(i): include cross reference to Objective LW3(c).
- (bA): includes references to FMUs, additional significant values, and the hierarchy of obligations under Te Mana o te Wai.
- (iA): include reference to the temporal extent of outstanding values.

119 Exhibit to Maurice Black's Rebuttal Statement of Evidence, 22 November 2023 [\[\[302.0097\]\]](#).

120 Exhibit to Maurice Black's Rebuttal Statement of Evidence, 22 November 2023, at 3 [\[\[302.0099\]\]](#).

121 Statement of Evidence of Belinda Harper, 11 August 2023, at [8.4] [\[\[301.0250\]\]](#).

122 2011 NPSFM required the quality of outstanding freshwater bodies to be protected.

123 Statement of Evidence of Belinda Harper, 11 August 2023, at [7.3]–[7.5] [\[\[301.0244\]\]](#)–[\[\[301.0246\]\]](#).

124 Exhibit to Maurice Black's Rebuttal Statement of Evidence, 22 November 2023, at 6 [\[\[302.0102\]\]](#).

11.6 With respect to the changes to Clause (bA): I do not consider it is necessary to refer to Te Mana o te Wai in light of clause (v) and do not support the amendments which relates to the request by TToH to include a list of known significant values.

11.7 With respect to the changes to Clause (iA): I support this request for the reasons set out in paragraphs 8.7–8.8 of my EIC.¹²⁵

11.8 I note the changes to clause (b)(i) are outside the scope of PC7. This clause is operative and was not amended as part of PC7.

POL LW1.3(c)

11.9 Mr Black has requested Policy LW1.3(c) be amended to refer to mahinga kai.¹²⁶ The change is outside the scope of PC7. Policy LW1.3 is operative and was not amended as part of PC7.

POL LW2

11.10 Mr Black has requested Policy LW2 be amended so it is subject to achieving Policy LW1.1 and references to the use values in Table 2A are deleted.¹²⁷

11.11 The changes to Policy LW2 are outside the scope of PC7. POL LW2 sets out a problem-solving approach, in three specified catchment areas where significant conflict exists between competing values. It is applicable to all water bodies in those catchments, not just the OWBs. In the decisions version of PC7, Policy LW2 was amended to be subject to Policy LW1.2, to provide clear guidance that the outstanding and significant values of OWBs will need to be protected when developing future plans.

¹²⁵ Statement of Evidence of Belinda Harper, 11 August 2023, at [8.7]–[8.8] [\[\[301.0251\]\]](#).

¹²⁶ Exhibit to Maurice Black's Rebuttal Statement of Evidence, 22 November 2023, at 7 [\[\[302.0103\]\]](#).

¹²⁷ Exhibit to Maurice Black's Rebuttal Statement of Evidence, 22 November 2023, at 8 [\[\[302.0104\]\]](#).

POL LW3A & POL LW3B

11.12 Mr Black has requested Policies LW3A and LW3B be amended to also apply to restricted discretionary activities.¹²⁸

11.13 As far as I am aware, this was not requested in TToH's Notice of Appeal. I note that in deciding whether to grant consent for a restricted discretionary activity, the discretion of the decision maker is restricted to the list of matters specified in the relevant rule. Being new policies, no rules in the RRMP currently refer to Policies LW3A and Policies LW3B.

OBJ 11, POL C1, C2, & C3

11.14 Mr Black has requested Objective 11, Policies C1, C2, & C3 be amended to included references to outstanding coastal waters.¹²⁹

11.15 This request relates to the issue of principle raised by TToH whereby PC7 defines OWB in a way that encompasses coastal water. I refer to paragraphs 7.3–7.5 of my EIC.¹³⁰

Definitions of outstanding water body & outstanding

11.16 Mr Black has requested:

- The references to 'recreation', 'geology' and 'ecology' be amended to refer to 'recreational', 'geological', and 'ecological' values.¹³¹ I agree with these changes as stated in paragraph 3.2 of my rebuttal.
- a new value titled 'hydrological' set be added to the definition of outstanding water body.¹³² This was not raised in TToH's notice of appeal and for the reasons set out in paragraph 3.3 of my rebuttal I do not agree.

128 Exhibit to Maurice Black's Rebuttal Statement of Evidence, 22 November 2023, at 11–13 [\[\[302.0107\]\]](#)–[\[\[302.0109\]\]](#).

129 Exhibit to Maurice Black's Rebuttal Statement of Evidence, 22 November 2023, at 15 [\[\[302.0111\]\]](#) and 16–19 [\[\[302.0112\]\]](#)–[\[\[302.0115\]\]](#).

130 Statement of Evidence of Belinda Harper, 11 August 2023, at [7.3]–[7.5] [\[\[301.0244\]\]](#)–[\[\[301.0246\]\]](#).

131 Exhibit to Maurice Black's Rebuttal Statement of Evidence, 22 November 2023, at 20 [\[\[302.0116\]\]](#).

132 Exhibit to Maurice Black's Rebuttal Statement of Evidence, 22 November 2023, at 20 [\[\[302.0116\]\]](#).

- a new term titled ‘outstanding coastal waters’ added into PC7.¹³³ This request relates to the issue of principle raised by TToH whereby PC7 defines OWB in a way that encompasses coastal water. I refer to paragraphs 7.3–7.5 of my EIC.¹³⁴

Screening criteria and list of OWB

11.17 Mr Black has requested some changes to the screening criteria which are discussed in Section 8 and 9 of my rebuttal and in the rebuttals of Mr Coffin, Dr Ryder, Dr Hicks, and Mr Greenaway.¹³⁵

12. CONCLUSION

12.1 Appendix A sets out all changes I am supporting to PC7 following consideration of the matters set out in paragraph 1.7. A number of these amendments represent a significant change to the provisions in the decisions version of PC7 and will need to be considered under Section 32AA of the RMA. I have sought to consider the relevant s32 matters in the process of assessing the changes to PC7, and in particular I have sought to ensure that the amended provisions are the most appropriate way to achieve the objectives.

12.2 I note that a s32AA evaluation must take into account the following matters, and at this stage there has not been sufficient time and information to comprehensively assess these matters in relation to the changes to the provisions:

- the benefits and costs of the environmental, economic, social, and cultural effects that are anticipated from the implementation of the provisions, including opportunities for economic growth and employment that are anticipated to be provided or reduced (s32(2)(a)) and, if practicable, quantify them (s32(2)(b)); and
- the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the provisions (s32(2)(c)).

133 Exhibit to Maurice Black’s Rebuttal Statement of Evidence, 22 November 2023, at 20 [\[\[302.0116\]\]](#).

134 Statement of Evidence of Belinda Harper, 11 August 2023, at [7.3]–[7.5] [\[\[301.0244\]\]](#)–[\[\[301.0246\]\]](#).

135 Exhibit to Maurice Black’s Rebuttal Statement of Evidence, 22 November 2023, at 21–26 [\[\[302.0117\]\]](#)–[\[\[302.0122\]\]](#).

12.3 The amendments that I support and that represent a significant change to the decisions version of PC7, include:

- The change to the screening criteria thresholds from that adopted by the IHP. In my view the changes continue to provide an effective and efficient way to assess a water body for an outstanding status. Plan clarity is maintained by referring to the thresholds, and by including the additional text that comments on the differences between value sets, and associated implications in Part 1 of Schedule 25.
- The inclusion of the Ruataniwha Plains Aquifer System and the Heretaunga Plains into Schedule 25. In my view the changes are an appropriate way to recognise the outstanding cultural and spiritual values of these aquifer systems.
- The inclusion of Lake Poukawa and Pekapeka Swamp, lower Ngaruroro River and Estuary, and Te Karamū River into Schedule 25. In my view the changes are an appropriate way to recognise the outstanding values of these water bodies.

Belinda Harper

Date: 17 January 2024

APPENDIX A