

1 July 2013



**Ngāti Kahungunu Iwi**  
INCORPORATED

The Chief Executive  
Hawke's Bay Regional Council  
Private Bag 6006  
NAPIER  
4142

Fax: 06 835 3601

Dear Sir,

We enclose by way of service, a copy of our notice of appeal to the Environment Court in relation to the Hawke's Bay Regional Council decisions on Proposed Plan Change 5 to the Regional Resource Management Plan (incorporating the Regional Policy Statement). We also include a copy of our application to the Court for waivers and directions.

If you have any queries regarding the appeal or the application, please contact me in the first instance.

Yours faithfully

Dr Adele Whyte  
For Ngāti Kahungunu Iwi Incorporated  
P O Box 2406  
HASTINGS  
4153

Ngāti Kahungunu Iwi Inc  
Proposed PC5 Appeal  
1 07 2013

**IN THE MATTER OF  
THE RESOURCE MANAGEMENT ACT, 1991**

**AND IN THE MATTER OF**

**PROPOSED PLAN CHANGE 5 TO THE HAWKE'S BAY REGIONAL  
RESOURCE MANAGEMENT PLAN, AUGUST 2006**

**AN APPEAL UNDER CLAUSE 14 OF THE FIRST SCHEDULE TO THE ACT,  
IN LIKE MANNER TO FORM 7**

**FROM NGĀTI KAHUNGUNU IWI INCORPORATED**

**ADDRESS FOR SERVICE:**

Dr Adele Whyte  
Acting Chief Executive  
Ngāti Kahungunu Iwi Inc  
P.O. Box 2406  
Hastings  
4153

Phone: (06) 876-2718  
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Email: [adele@kahungunu.iwi.nz](mailto:adele@kahungunu.iwi.nz)

**TO:**

The Registrar  
The Environment Court  
P O Box 5027  
DX: SX10044  
WELLINGTON

**1. APPELLANT:**

Ngāti Kahungunu Iwi Incorporated (NKII)

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

Hawke's Bay Regional Council  
Private Bag 6006  
Napier  
4142

**3. STATEMENT:**

We are not a trade competitor for the purposes of section 308D of the Resource Management Act. We made submissions to proposed Plan Change 5 to the Hawke's Bay Regional Resource Management Plan (incorporating the Regional Policy Statement) and presented and spoke to our submissions at the relevant hearings.

**4. DATE OF RECEIPT OF THE DECISIONS:**

The decisions were publicly notified 5<sup>th</sup> June 2013 and we received hard copies of the decisions shortly thereafter.

**5. RESOURCES AFFECTED BY THE DECISIONS:**

The resources affected by the decisions are natural and physical resources within the Hawke's Bay region including land, ground water and surface water resources and the species they contain, and natural resources within the coastal marine area. Many of these are regarded by Ngāti Kahungunu as ngā taonga tuku iho.

## 6. DESCRIPTION OF THE SUBJECT MATTER:

The decisions reached by the hearings committee and adopted by Hawke's Bay Regional Council in relation to proposed Plan Change 5 and the statements, evidence and relief sought within our written and oral submissions.

## 7. RELIEF SOUGHT:

(a) Amend provisions in Plan Change 5 so that it gives effect to Objective D1 and Policy D1 of the National Policy Statement for Fresh Water Management (NPS FWM).

(b) The addition of a discrete tāngata whenua objective and policy strand to provide surety that tāngata whenua interests and values are catered for in a manner envisaged by the NPS FWM, the Land and Water Forum, and Treaty settlement agreements.

(c) Classification of the Heretaunga aquifer system as an outstanding fresh water body, and support this through objectives and policies in proposed Plan Change 5.

(d) Recognition of the cumulative effects of activities related to land and water management, on tāngata whenua interests and values within the coastal marine area, including the significance of the coastal marine area to Ngāti Kahungunu whānau, hapū and iwi.

(e) Better integration between proposed Plan Change 5 provisions and other Māori / tāngata whenua provisions within the rest of the Regional Policy Statement and Regional Plan.

(f) Amend Objective 34 in Chapter 3.14 to read: "To recognise and provide for matauranga a hapu o Ngati Kahungunu and local tikanga Maori values and interests, and the contribution they make to sustainable management and the fulfillment of HBRC's role as established under the RMA, and tangata whenua roles as kaitiaki."

(g) Add a new objective OBJ 34A: To recognise that the whole of the coastal marine area is of significance to Ngati Kahungunu and to reflect this significance in policies and plans.

(h) Amend explanation and reasons in 3.8.2 (as proposed) by adding: "The Heretaunga Plains aquifer system is one of the region's outstanding freshwater bodies." Objective A2(a) of the National Policy Statement for Freshwater Management directs that the overall quality of freshwater within the region is maintained or improved while protecting the quality of outstanding freshwater bodies."

(i) Retention of the operative (August 2006) version of Objective 21 and amend Objective 22 as specified in the original NKII submission.

(j) Amend proposed Policy LW3 Managing use of production land, and the explanation and reasons statement so that they encompass the amendments specified in paragraphs 64.1 and 65.1 of the NKII submission, and change clause (a) to read: -

"the discharge of nitrogen to land, and thereafter to groundwater is restricted to minimise adverse effects on water quality;" and for clause (c)

"soluble reactive phosphorus limits set out in Policy 71 of this plan will be regulated through resource consent conditions."

Amend the reasons and explanation for Policy LW3 to read: -

"Policy LW3 makes it clear that HBRC will manage production land use activities to minimise the leaching of nitrogen, phosphorous and faecal coliform bacteria to groundwater and surface water under sections 9 and 15 of the RMA in order to ensure that groundwater and surface water values identified inspecified catchment areas are maintained or enhanced."

(k) Amend Issue statement in RRMP Ch 3.10 (Surface Water Resources) by adding two new clauses to read:

- (d) The potential contamination of aquifers and consequential degradation of surface water", and
- (e) The relationship between ground water quality and surface water recharge."

(l) Amend clauses in proposed POL LW1to include:

- "(d) protects water quality and water quantity of outstanding freshwater bodies identified in Policy LW1.
- (k) allows for large-scale community water storage infrastructure to provide increased security for water users in over-allocated catchments while avoiding, remedying or mitigating adverse effects on water resources, associated ecosystems, environments and tikanga Maori values;" and
- "Takes into account cumulative effects when managing water quantity and quality."

(m) Amend Table 1 in POL LW2 thus: -

- to include as a primary value for each of the catchment areas: - "the relationship of tangata whenua with the river;
- separate the "Greater Heretaunga/Ahuriri Catchment Area" into separate parts, i.e. Karamu, Ngaruroro etc;
- add the following as primary values / uses for each of the Catchment Areas: "tikanga Maori", "kaitiakitanga", "natural character" and "aquifer recharge zones;"

- relocated from secondary values / uses to primary values / uses for all catchment areas: "trout habitat", "native fish habitat" and "contact recreation;"
  - add "water quality in the Heretaunga aquifer" as a Primary value / use for the Greater Heretaunga/Ahuriri Catchment Area;
  - add "water quality in the Ruataniwha aquifer" as a Primary value / use for Tukituki Catchment Area.
  - Transfer stock water use to the secondary value / use column
- (n) Amend AERs in Ch 3 to include: "tikanga Maori and the values therein are taken into account when managing freshwater" or words to like meaning and effect.
- (o) Deletion of the Issue LW1A as it lacks provenance due to no submitter having asked for it to be included.
- (p) Separation of land management and water management within the objectives and policies for Plan Change 5.
- (q) Add a new tāngata whenua objective and policy to the proposed plan as below, and make any consequential amendments to other objectives and policies within Plan Change 5: -

**"OBJ LW3**

**Issue: Tāngata whenua cultural interests in natural resource management**

*To recognise and provide for tāngata whenua values and interests in integrated resource management matters associated with fresh water, associated ecosystems, land use and development, and for the coastal environment through: -*

- a) ensuring the mana of hapū, whānau and iwi is appropriately acknowledged in all natural resource management matters throughout the region*
- b) endorsing Māori spiritual values including Wairuatanga, Mauri and Kaitiakitanga as fundamental values that contribute positively to sustainable resource management outcomes*
- c) ensuring further breaches of the Treaty of Waitangi are not created through local government decision-making*
- d) acknowledging Māori rights and interests in the management of taonga including wāhi tapu, wāhi taonga, fresh water resources including fresh water bodies of significance to Maori, and coastal waters and resources*
- e) providing for appropriate access for tāngata whenua to nohoanga and those resources in d) above for cultural and traditional purposes*

**Policy LW3.1**

**Fresh water, land use and development**

*Fresh water quantity and quality will be managed in a manner that ensures: -*

- a) adverse effects on water resources and aquatic flora and fauna of significance to tāngata whenua are managed in a manner that avoids, remedies or mitigates adverse effects that are more than minor.*
- b) abstractions from aquifers and ground water zones are managed within sustainable limits and sustainable ground water levels to ensure total abstraction volume does not exceed average annual rates of recharge*
- c) where relevant, the connectivity between ground and surface water is reflected in resource consent conditions, and surface water abstraction is restricted so as to maintain or enhance characteristics of significance to tāngata whenua*
- d) discharges to surface water or to land will be managed in a manner that:
  - i) acknowledges tāngata whenua values and interests in the receiving environment*
  - ii) protects those characteristics of natural resources of significance to tāngata whenua*
  - iii) where appropriate, provides for cultural monitoring of fresh water resources**
- e) community water schemes will be managed within limits that support the sustainable use and management of natural ecosystems, tāngata whenua interests and values, and the ecology of rivers, lakes, wetlands, estuaries and aquifers*

***Policy LW3.2***

*Issue: Tāngata whenua and management of the coastal environment.*

*The whole of the coastal marine area of Hawke's Bay is of significance to Ngāti Kahungunu. Management of the region's land and fresh water resources will take into account the potential for cumulative adverse effects of land use and fresh water use and development on the coastal marine area and ensure: -*

- a) recognition of and provision for the interests of the coastal hapu of Ngāti Kahungunu who hold mana moana over the coastal environment and its natural resources.*
- b) management of the coastal environment shall recognise and provide for the status and kaitiaki role that the coastal hapu of Ngāti Kahungunu have within each of their traditional rohe.*

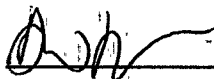
**8. REASONS FOR OUR APPEAL:**

- (a) The section 32 analysis did not give due consideration to the hierarchy within resource management processes under the RMA 1991, and consequently the

objectives and policies as proposed, and some of the decisions on submissions, do not give effect to the RPS FWM.

- (b) Inadequate consideration for the values and interests of tāngata whenua in terms of how these were taken into account or recognised and provided for in decisions on proposed Plan Change 5 objectives, policies and other provisions.
- (c) Failure to give appropriate recognition to Treaty settlements around fresh water related issues
- (d) The decisions do not identify and protect outstanding fresh water bodies
- (e) The decisions on the proposed plan enable activities without taking into account the relationships of tāngata whenua with the coastal marine area and resources therein.
- (f) The potential for the proposed plan to enable further degradation and unsustainable use of fresh water resources within Hawke's Bay.
- (g) Some decisions do not appear to have provenance from submissions.
- (h) Some of the decisions do not promote the sustainable management of natural resources.

SIGNED:



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Dr Adele Whyte  
Acting Chief Executive

DATE:

1/7/13

FOR:

Ngāti Kahungunu Iwi Incorporated



## **ATTACHMENTS:**

- A: Original submissions lodged by the appellant
- B: Submissions presented at the relevant hearings
- F: Decisions of the Hawke's Bay Regional Council
- G: Application for waivers and directions
- H: List of parties to be served
- I: Filing fee of \$511.11
- J: Two copies of our appeal

**IN THE ENVIRONMENT COURT**

**IN THE MATTER OF** The enclosed appeal under Clause  
14 of the First Schedule to the Resource  
Management Act, 1991

**BETWEEN** Ngāti Kahungunu Iwi Incorporated  
**Appellant**

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

**TO:** The Registrar  
Environment Court  
P O Box 5027  
Wellington  
6040

Ngāti Kahungunu Iwi Incorporated  
Proposed HBRC PC5 appeal  
01072013 – Application for Waivers

## APPLICATION FOR WAIVERS AND DIRECTIONS

### 1. Applicant:

**Name:** Ngāti Kahungunu Iwi Incorporated

**Address:** PO Box 2406  
Stortford Lodge  
HASTINGS  
4153

**Phone:** (06) 876 2718

**Fax:** (06) 876 4807

**Email:** [adele@kahungunu.iwi.nz](mailto:adele@kahungunu.iwi.nz)

### 2. Statement:

We are a party who made submissions on proposed Plan Change 5 to the Hawke's Bay Regional Resource Management Plan, the subject matter of the enclosed Notice of Appeal.

### 3. Nature of proceedings:

The notice of appeal under the First Schedule of the Resource Management Act, 1991, in regard to the Hawke's Bay Regional Council's decisions on proposed Plan Change 5 to the Hawke's Bay Regional Resource Management Plan (Notice of appeal lodged with this application).

#### **4. Waivers and Directions Sought**

In regard to the notice of appeal filed with this application, the applicant seeks the following waivers and directions pursuant to section 281 of the Resource Management Act, 1991: -

- i) The dispensing of the requirement for service on the Hawke's Bay Regional Council as decision-maker and on the submitters to the proposed plan change, of three of the attachments to the notices of appeal, being: -
  - A copy of the appellant's (Ngāti Kahungunu Iwi Incorporated's) initial submission
  - A copy of the additional submissions we presented at the hearings
  - The respondent's decisions on the proposed plan, and
- ii) That a copy of the notice of appeal, a copy of the application for waivers and directions and the list of those parties required to be served, be considered sufficient for service on the respondent and on submitters to the proposed plan.
- iii) If the Court sees fit not to grant this waiver of the requirements as requested, that the Court consider an extension of the time for service of these documents.

#### **5. The grounds for this Application are:**

The Hawke's Bay Regional Council and submitters at the relevant hearings for the proposed plan have already received copies of the appellant's submissions and the Regional Council distributed summaries of our initial submissions to all submitters prior to the hearings being held.

The relevant decisions of the Regional Council, which are the subject of this appeal, have likewise been supplied to all submitters who were party to the proceedings and these have been readily available on the council's website.

That the grounds for this application for waivers and directions are reasonable, will avoid unnecessary expense and will not result in any prejudice or inconvenience to any persons involved.

While awaiting the Environment Court's decision on this application, the appellant will serve on parties in the "List of Parties to be Served",:-

- A copy of the notice of appeal
- A copy of this application for waivers and directions, and
- A list of the parties to be served

Signed: \_\_\_\_\_



Date: \_\_\_\_\_

1/7/13

Dr Adele Whyte

Acting Chief Executive

**6. Address for Service**

Ngāti Kahungunu Iwi Incorporated  
P O Box 2406  
HASTINGS  
4153