

Before an Independent Hearing Panel

In the matter of the Resource Management Act 1991

And

In the matter of Proposed Plan Change 9 to the Hawke's Bay Regional Plan
(Tūtaekurī, Ahuriri, Ngaruroro and Karamū Catchments) (**PC9**)

Outline of Submissions for Hastings District Council and Napier City Council

Dated 21 June 2021

Introduction

1. These submissions are given on behalf of Hastings District Council (**HDC**) and Napier City Council (**NCC**) (together, the **Councils**). As described in the evidence, particularly by Mr Clews, the Councils have played an active role in the preparation of Proposed Plan Change 9 to the Hawke's Bay Regional Plan (Tūtaekurī, Ahuriri, Ngaruroro and Karamū Catchments) (**PC9**).
2. While supportive of what PC9 seeks to achieve overall, the provisions will have a significant impact on the Councils in their various capacities, particularly in terms of their roles as water suppliers and in terms of their obligations to provide for the wellbeing of their current and future communities. The Councils therefore filed reasonably extensive submissions and further submissions on PC9 with a view to ensuring the provisions are workable and consistent with their various statutory obligations.
3. The Councils have also called evidence to support their submissions, both to provide the Panel with the context and reasons for the Councils' position, and detailed planning evidence to explain the rationale for the changes sought. A full track change version of PC9 (amending the Section 42A version) with the specific changes sought by the Councils and with the submission point and evidence identified, is appended to Ms Sweeney's planning evidence. Some of those are accepted in the

Section 42A Addendum Report. Those aspects of the Councils' relief sought which are still outstanding as between HBRC and the Councils are set out in the attached summary table.

4. Coming at the end of several weeks of hearings and numerous sets of legal submissions, I do not intend to address the Panel on the tests for assessing plan changes. However I do address some of the legal issues the Panel will need to consider when assessing the Councils' submissions and determining the most appropriate content of PC9, namely:
 - (a) The relevance of the National Policy Statements on Freshwater Management 2020 (**NPSFM**) and Urban Development 2020 (**NPSUD**) and how these can be reconciled;
 - (b) The approach to assessing the proposed Prohibited Activity status in Rule TANK 12;
 - (c) The approach to assessing the appropriate extent of Source Protection Zones for the Hastings District.

Relevant National Policy Statements

NPS - Freshwater Management

5. By this stage of the hearing, the Panel have heard numerous submissions on the impact of the NPSFM and how it fits with PC9. I do not intend to address you on that in detail, but can indicate the Councils generally endorse the approach set out in legal submissions for Mr Apple, namely that:¹
 - (a) If there is scope, then changes which give effect to the NPSFM must be made;
 - (b) Care needs to be taken to read the NPSFM's policies in context – while directive language is used, this only applies in certain context and where definitions are clearly met. I discuss this further below in relation to Policy 11;
 - (c) Given the significant effort that has been put into the TANK collaborative process, and into PC9 so far, PC9 should not be withdrawn, even if it will not give full effect to the NPSFM.

¹ Legal Submissions for Mr Apple New Zealand Ltd, 9 June 2021, paras 8 -21.

6. On the last point, the Councils have carefully considered whether they should endorse the approach taken by Ngati Kahungunu and others who seek the withdrawal of PC9 and for the process to be restarted with the requirements of the NPSFM, and particularly Te Mana o Te Wai, as the primary focus. The Councils acknowledge that viewpoint, however, they are conscious of the significant time, effort and expense that has been incurred by all participants in reaching the current version. On balance, they consider it is appropriate to 'bank' that effort by getting the best possible version of PC9 in place, even if further changes may be required to fully implement the NPSFM. This will at least allow progress to be made towards achieving freshwater quality and quantity objectives.
7. In terms of the relief sought by the Councils, the expert planning evidence has not identified any aspect that is inconsistent with the NPSFM, or would result in PC9 failing to give effect to it.

NPS - Urban Development

8. Just as PC9 must give effect to the NPSFM, it must equally give effect to the NPSUD.
9. HBRC, NCC and HDC are all listed as 'Tier 2 local authorities' in Appendix 2 to the NPSUD, so the provisions of the NPS apply equally to the Regional Council. There is an obligation on all three local authorities to "*at all times, provide at least sufficient development capacity to meet expected demand for housing and for business land over the short term, medium term and long term*" (Policy 2). Mr Clew's evidence provides a detailed discussion of what this obligation means for the Councils in practice. In short, they must have enough land live zoned for expected demand within the next 3 years; either zoned or proposed to be zoned for expected demand within 3 – 10 years; and identified in a Future Development Strategy for demand in the 10 – 30 year period. This includes demand for housing and business land.
10. That land must also be 'infrastructure-ready'. I agree with the legal submissions for Lowe Corporation that the reference to infrastructure in the NPSUD necessarily includes the ability to actually service the intended development.² The ability to provide water to service a planned development is a precursor to rezoning land, or to constructing the infrastructure necessary to service it. A plan change to open up land for residential or business development could not succeed without evidence

² Legal Submissions for Lowe Corporation Ltd, para 37.

that it could be serviced for water. Any such proposal would fail to give effect to the requirement of the Regional Policy Statement that:³

Within the region, territorial authorities shall ensure development is appropriately and efficiently serviced for the collection, treatment, disposal or re-use of sewage and stormwater, and the provision of potable water by:

- a) Avoiding development which will not be serviced in a timely manner to avoid or mitigate adverse effects on the environment and human health; and ...

11. Mr Clews has explained how the population projections used for HPUDS 2017 are now found to have significantly underestimated actual growth, and projected growth is now substantially greater than what that document predicts.
12. The Councils are committed to, and have already demonstrated, efficiency and conservation measures which allow them to provide water to a growing population within their existing allocated volume. In HDC's case, it has relinquished allocation for 6 million cubic metres of water annually,⁴ and is still able to service its growing population at present. The HPUDS review process is not yet complete. Depending on its outcome, and the expected demand it identifies, it might be possible for that demand to be serviced for water within existing allocations. But at this stage, we do not know that. Given the high growth demands outlined in Mr Clews's evidence, it may be unlikely.
13. HBRC's response to the Panel's queries about how municipal supplies are affected tellingly states "*Enabling HDC and NCC to retain their current allocations will provide them some room for growth in the short term but also acknowledges the need to phase-out and avoid over-allocation in the TANK catchment*".⁵
14. No evidence is called for HBRC to support the contention that the consented volumes are sufficient for growth in the 'short term', which presumably means the next 3 years, as that is how it is defined in the NPSUD. The reference to providing "some room" for growth indicates the author does not properly appreciate the obligations that apply to HBRC under the NPSUD. Providing "some room" for "short

³ POL UD13, emphasis added

⁴ Evidence of Brett Chapman, para 31

⁵ 'Shopping list for Proposed Plan Change 9 Hearing', Friday 11 June 2021, commentary on POL TANK 50.

term” growth is not sufficient to meet the HBRC’s statutory obligations. That simply fails to implement the directive requirements of the NPSUD.

15. The Councils are not seeking free rein to have unlimited access to water to service the growth they are required to provide for. They support the numerous provisions requiring efficiency measures, and working within existing allocations being the clear starting point and preference. What they do seek though is that PC9 not foreclose the possibility that an increased allocation may be required in order for them to meet their NPSUD obligations.
16. At present, there is a real possibility that such a proposal would be a Prohibited activity. Ms Sweeney’s evidence from para 19 sets the issue out clearly. An application for water which exceeds current consented allocation is either a Discretionary or Prohibited Activity. As Ms Sweeney explains, there is real doubt that the criteria under TANK 11 would be satisfied, and the more likely outcome is that TANK 12 would apply, and no application could be made at all.
17. Ms Sweeney suggests an amendment to TANK 11 to clarify that increased allocations for municipal supply are captured, and this is the preferred relief. Alternatively, she suggests a non-complying activity for such applications. In either case, there would be a full assessment against the relevant objectives and policies, and an assessment of effects. Given the specificity of the objectives and policies, it can be expected that only proposals that could demonstrate every effort at ensuring efficiency had already been made, and the bare minimum additional allocation was sought would have a chance of being approved.
18. In terms of those objectives and policies, Ms Sweeney sets out some changes that are sought, with an important one being that growth predictions should be tagged to the current growth projections, rather than HPUDS 2017. Continued reference to outdated growth projections is not justified in the face of the NPSUD’s obligations to keep pace with current projected demand and places all three councils at risk of being in breach of their statutory obligations.

Reconciling and giving effect to both NPS

19. The Council officer’s reference to allowing “some growth” while phasing out over-allocation may be a suggestion that the NPSUD and NPSFM having conflicting requirements and that HBRC has made a policy choice to implement the NPSFM over

the NPSUD. As the High Court held in *Transpower New Zealand v Auckland Council*, “There is no basis on which to prefer or give priority to the provisions of one National Policy Statement over another ..., much less to treat one as “trumping” the other”.⁶ Rather, the Courts are clear that the decision maker must attempt to reconcile any competing provisions.

20. The Supreme Court in *EDS v King Salmon* held that decision-makers dealing with potentially incompatible policies must make “a thoroughgoing attempt to find a way to reconcile them”.⁷ This requirement was reiterated in the High Court’s recent decision in *Tauranga Environmental Protection Society Inc v Tauranga City Council* where the Court summarised the task as follows:⁸

A decision-maker considering a plan change application must identify the relevant policies and pay careful attention to the way they are expressed. As with any legal instrument, the text of the instrument may dictate the result. Where policies pull in different directions, their interpretation should be subjected to “close attention” to their expression. Where there is doubt after that, recourse to pt 2 is required.

21. The Supreme Court in *EDS v King Salmon* and the High Court in *Tauranga Environmental Protection Society* emphasised that being too quick to resort to an ‘overall balancing exercise’ with reference to Part 2 was a legal error. The overriding obligation is to give effect to both sets of requirements.

22. In the case of PC9, the conflict is most clearly crystallised in Rule TANK 12, which makes most applications for increased takes a Prohibited activity. In my submission, and as set out above, this rule conflicts with Policy 2 of the NPSUD:

Tier...2...local authorities, at all times, provide at least sufficient development capacity to meet expected demand for housing and for business land over the short term, medium term, and long term.

23. The Prohibited activity rule is presumably intended to give effect to Policy 11 of the NPSFM:

Freshwater is allocated and used efficiently, all existing over-allocation is phased out, and future over-allocation is avoided.

⁶ [2017] NZHC 281 at [77]

⁷ *Environmental Defence Society Inc v New Zealand King Salmon Co Ltd* [2014] NZSC 38, [2014] 1 NZLR 593 (*EDS v King Salmon*), at [131]

⁸ [2021] NZHC 1201 (27 May 2021) at [79]. Internal references to *King Salmon* omitted.

24. In considering how to give effect to both requirements, applying the directive of the higher Courts set out above, the Panel must first pay close attention to the expression of these policies.
25. In this regard, careful attention is required to what is actually required in terms of avoiding 'over-allocation' as provided for in the NPSFM. Over-allocation is to be 'phased out', which means it is expected to take some time for that to occur. The reference to 'future' over-allocation suggests that phase is to occur after existing overallocation has been brought within appropriate limits. In relation to the 'limits' required to be met, provides for 90 million cubic metre as an 'interim limit', however that is not a take limit that has been set in accordance with 3.17 of the NPS. The basis for it has been challenged by a number of submitters, and the Councils' submission is that this is more properly referred to as a 'target'. It is therefore not the case that an allocation which exceeds the 'interim limit' or 'target' would necessarily be contrary to 'phasing out' existing over-allocation, or result in future over-allocation.
26. The second stage is for the Panel to consider whether both policies can be given effect to. In my submission, it is entirely possible for PC9 to give effect to both Policy 2 of the NPSUD and Policy 11 of the NPSFM by amending the Prohibited status to Non-complying and/or providing for increased allocations for municipal uses as a Discretionary activity, to be assessed against the relevant objectives and policies. That activity status leaves open the possibility of a particular proposal that implements the growth obligations of the NPSUD being consented, provided an applicant can demonstrate that water will be used efficiently and will not otherwise conflict with the NPSFM's requirements.
27. It is also important that the objectives and policies be amended to better reflect the obligation to enable housing and business land through provision of water. If that is not done, the result will be a default Prohibited activity, given the inability to comply with objectives and policies that reference outdated growth projections and do not contemplate the need to service growth.
28. Where a path is available to the Panel that reconciles and gives effect to both policies, a decision to retain Prohibited status in my submission would amount to favouring one NPS over the other, meaning PC9 would breach the requirements of s 67(3)(a), in failing to give effect to the NPSUD.

Prohibited Activity Status

29. In the event that the Panel does not consider that the status of Rule TANK 12 should be amended from Prohibited to Non-Complying by virtue of the NPSUD, it is nevertheless obliged to consider whether Prohibited status is the most appropriate way of giving effect to the objectives of PC9 and the existing Regional Plan.
30. It is important to bear in mind that having a Non-Complying activity granted consent is by no means any easy path. Following the decisions referred to above, including *King Salmon*, and resource consent decisions such as *RJ Davidson*, the Courts have been at pains to ensure any consent granted is consistent with the objectives and policies of the Plan under which it is decided. This is generally in recognition that the objectives and policies reflect the higher order statutory documents, and ultimately, Part 2 of the RMA. They also reflect the outcome of the community's participation in the plan process, and the generally Courts are slow to depart from that collective view.
31. Locally, HDC has had a number of decisions which declined non-complying proposals where they conflicted with the objectives and policies of the recently approved Hastings District Plan, even where effects on the environment are less than minor, with the Environment Court noting:⁹
- The [Hastings Proposed District Plan] has recently been prepared and should be respected as containing the most recent statement of the community's aspirations for its district. To grant consent may give rise to concerns about public confidence in the consistent application of the rules in the PDP.
32. A further example is the *Tauranga Environmental Protection Society* decision referred to above. That case concerned an application by Transpower New Zealand for Discretionary activity consent to realign electricity transmission lines, which was granted by the Council, and upheld by the Environment Court. However on appeal, the High Court found that there were provisions of the Regional Coastal Plan which meant that the grant of consent was an error of law. The provisions there were policies which implemented the New Zealand Coastal Policy Statement and provided 'cultural bottom lines' which needed to be given effect to.

⁹ *Stone v Hastings District Council*, [2019] NZEnvC 101 at [122]. See also *Endsleigh Cottages Ltd v Hastings District Council*, [2020] NZEnvC 64.

33. These decisions illustrate that the objectives and policies of a plan have real ‘teeth’ when it comes to assessing Discretionary and Non-Complying activities. In my submission, this addresses the concern set out in the Section 32 report that Prohibited status would “*avoid the potential for assessing a single activity as no more than minor while not fully accounting for cumulative effects...*”. An absence of adverse effects is not decisive of an application for consent. In my submission, Prohibited status is not necessary to achieve the objectives and policies of PC9.
34. On the other hand, Mr Drury and Ms Sweeney both point out objectives and policies of the Regional Plan which are relevant but which would not be achieved by Prohibited status.¹⁰ Non-complying fallback status (or Discretionary for municipal takes) will, with the right objectives and policies, provide an opportunity for proposals which have real environmental merit, while providing no realistic pathway to consent for those that offend what PC9 is trying to achieve.

Source Protection Zones – Risk, Precautionary Approach and Regulatory Burden

35. An issue of dispute between HDC and HBRC is the mapping of SPZs around HDC’s bores. As outlined in the evidence of Mr Chapman and Ms Sweeney, HDC seeks a conservative line, which encompasses the areas identified in both the numerical and analytical models.
36. In deciding which map to prefer, the requirements of s 32 RMA to consider costs and benefit, and the risk of acting on uncertain information, are relevant to the Panel’s decision.
37. A useful starting point is to consider the purpose of SPZs. OBJ TANK 9 provides that activities in source protection areas for Registered Drinking Water Supplies do not become unsuitable for human consumption. POL TANK 6 provides that “*the quality of groundwater of the Heretaunga Plains and surface waters used as source water for Registered Drinking Water Supplies will be protected...*” (emphasis added). It is worth noting that the requirement to ‘protect’ is a directive term, without qualifiers.
38. As described in para 45 of Mr Chapman’s evidence, the purpose of SPZ plans and associated regulatory controls “*is to ensure that applicants engage with water suppliers in developing their applications and that appropriate assessments are*

¹⁰ Evidence of Cameron Drury, paras 30-45; Evidence of Annette Sweeney, paras 19-35.

undertaken to evaluate the impact of proposed activities on the drinking water source”.

39. Importantly, what is sought to be protected is the safe and secure provision of drinking water to the community – or put another way, the avoidance of a significant adverse effect on the environment in the form of potentially life-threatening contamination of drinking water. Even where the possibility of that type of effect arising is one of low probability, its extremely high potential impact means it is an ‘effect’ as defined in the RMA, and must be fully considered.
40. HBRC prefers that the SPZ maps around the HDC bores be much smaller. The rationale for that is set out in the Reply evidence of Mr Rakowski, who essentially states that the numerical model contains ‘less uncertainty’ than the analytical model and is therefore less conservative.
41. Mr Rakowski’s evidence does not assert that there is no, or negligible, risk associated with discharge of contaminants of land use activities in areas that are within HDC’s preferred SPZ but outside HBRC’s. Rather, he appears to be saying there is a lower probability of an effect occurring. That is not a sufficient reason to prefer the smaller area. Even if the Panel accepts that there is a low probability of contamination in these areas, having regard to the very high potential impact, it is open to the Panel to prefer the more conservative approach preferred by HDC.
42. Section 32(2) provides a useful (and indeed, mandatory) way to assess the alternative SPZ maps before the Panel.
43. In terms of the benefits anticipated from implementation of the SPZ provisions, in my submission, a greater benefit is clearly achieved through having a larger area within the SPZs. More activities that might have a potential impact on source water will be caught and measures to ensure there is no such effect identified and put in place. Even if one such risk is avoided, that is a clear ‘benefit’ which must be factored into your assessment.
44. In terms of the costs of having a larger SPZ, Ms Sweeney’s evidence addresses the regulatory burden arising from having a SPZ applying over a person’s land, and concludes that there is no additional burden where the SPZ area overlays the unconfined aquifer. In that area, consent would be required anyway, and the SPZ notation simply adds a matter of consideration. She notes that a consenting

requirement is triggered for some activities in areas not within the unconfined aquifer, for a restricted discretionary activity. That is a relevant 'cost' which the Panel need to weigh up, although Ms Sweeney notes that a permitted activity is not a zero-cost option.

45. The other aspect of s 32(2) which is relevant is the requirement to assess the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the provisions. Mr Chapman will address the Panel on his response to Mr Rakowski's evidence on the 'superiority' of the numerical methods over the analytical method. Both are tools to predict the behaviour of groundwater, which is itself relatively unpredictable, and is subject to changes as the result of unpredictable events such as flooding and earthquakes. Mr Rakowski's evidence on stream depletion acknowledges at para 7.1:¹¹

Despite large volumes of available geological and hydrological data that enabled good model calibration, there is still some residual uncertainty. This is a common issue with all groundwater models. ...Despite this uncertainty, in my opinion there is enough evidence to indicate relatively high connection to the rest of the Heretaunga Aquifer System, even though the exact nature of connection...may be uncertain.

46. The Panel is clearly dealing with uncertain information and must consider associated risks. The risk of acting on the basis of the HBRC-preferred SPZ maps is that they will prove to be insufficiently conservative, and potential sources of contamination will not be picked up and assessed. That is a risk that cannot properly be ignored or dismissed.
47. Mr Rakowski describes the merging of analytical and numerical methods as 'unnecessarily conservative'. That statement is not explained further, and I submit that it is an opinion Mr Rakowski is not qualified to give and must be disregarded. The degree of conservatism appropriate when dealing with serious risk to human health is for this Panel, not a modeller.
48. The Panel will need to consider the probability that Mr Rakowski's model might have underestimated the area of concern and the implications of any such error. In my submission, even if that probability is low, the potential 'costs' of being wrong are so substantial, and the costs of identifying a larger area so minor in the scheme of

¹¹ Statement of Supplementary Evidence of Pawel Rakowski for HBRC, 4 June 2021.

things, that an evaluation under s 32 weighs heavily in favour of HDC's preferred maps.

Asher Davidson
Counsel for Hastings District Council and Napier City Council
21 June 2021

Appendix A – Summary of Main Points of Outstanding Relief Sought in Submissions¹²

Provision	Theme of Change Sought	Evidence
OBJ TANK 9	Reference to managing risks to source water should be reinserted	Sweeney - Summary
OBJ TANK 16(b)	Amend reference to HPUDS 2017	Sweeney
POL TANK 7	Redraft to refer to Source Protection extents	Sweeney
POL TANK 28(j)	Remove reference to District Plans	Sweeney
POL TANK 31(c)	Remove reference to District Plans	Sweeney
POL TANK 37	Amend reference to 'interim limit' to a 'target'	Drury
New POL TANK 37A	Provide for re-allocations in exceptional circumstances	Drury
POL TANK 39	Provide a different regime for municipal water supplies	Drury
POL TANK 41	Insert timeframe for investigation of water storage and release scheme	Drury
POL TANK 42	Refer to considering new information on long term sustainable equilibrium of groundwater resource	Drury
POL TANK 45	Provide a different regime for municipal water supplies	Drury
POL TANK 48	Provide for transfers for food processing	Drury
POL TANK 50	Enable transfer of water between municipal supplies or from individual abstraction to the municipal supply through advice note	Sweeney
Pol TANK 50(a)	Amend reference to HPUDS 2017	Sweeney
Rule TANK 9	Amend reference to HPUDS 2017	Sweeney
Rule TANK 10	Amend reference to HPUDS 2017	Sweeney
Rule TANK 11	Provide for Municipal Water Supplies specifically (alternatively introduce Rule 11A)	Sweeney
Rule TANK 12	Amend Prohibited Status to Non-Complying	Drury
Rule TANK 19	Amend to clarify as set out in evidence	Sweeney
Rule TANK 20	Amend to clarify as set out in Summary evidence	Sweeney - Summary
Rule TANK 21	Add reference to ' <u>primary or secondary flow</u> ' Amend clause (vi) as set out in Summary evidence	Sweeney - Summary
SPZ Maps	Amend to reflect combination of models for HDC bores	Chapman / Sweeney

¹² This table is for summary purposes only and may not include all minor or consequential changes required.

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Summary of evidence by Annette Sweeney for Hastings District and Napier City Councils

Dated 21 June 2021

Introduction

1. My name Annette Sweeney and I am a Principal of Good Earth Matters Consulting engaged to provide planning evidence on behalf of Hastings District and Napier City Councils. The nature of my role, and agreement to abide by the Code of Conduct for Expert Witnesses, is set out in my evidence dated 11 May 2021. This statement summarises that evidence.
2. I note that the majority of the relief sought in my evidence statement has been accepted by Regional Council officers in the s42A addendum track changes version of the PC9 and this statement therefore focuses on matters remaining.

Allocation of Water for Municipal Water Supply

3. The Councils's submissions sought that policies and rules reference "HPUDS 2017 or successive versions and / or any requirements prescribed under a NPS on Urban Development" noting that the most recent growth projections indicate growth is likely to exceed that stated in HPUDS 2017. This issue is discussed in my evidence commencing paragraph 12. I also note that, due to water services reform, it is likely that the Councils will need to consider expanding their serviced areas such that more properties may need to be supplied without any additional growth per se occurring. My evidence discussed consenting pathways to allow for Councils to be able to obtain sufficient allocation to meet growth needs including allocation above existing consented allocation where the networks are achieving best practice efficiency benchmarks or better.

4. Some of the relief sought has been included in the s42A addendum report but this does not include amending the references to HPUDS2017 to include successive versions. The additional information presented by Council officers to the hearing (the “shopping list”) has also assisted to understand the position of the s42A reporting officers.
5. In terms of the pathway for consenting for municipal water supplies, the flow diagram provided by regional council officers is helpful in understanding the intent of Rules TANK 11 and TANK 12. In my opinion, I consider that municipal supplies seeking additional allocation to meet growth demands and meeting appropriate efficiency benchmarks remains at risk of being considered a prohibited activity as set out in my evidence at paragraph 21. In my view, the relief sought in my evidence paragraph 26(a) would provide appropriate relief to avoid this risk.
6. For reasons set out in my evidence statement, I remain of the view that the policy provisions need to refer to HPUDS 2017 or successive versions in order to support the consenting pathway for a Discretionary Activity.
7. With respect to transfers, the s42A addendum track changes version of Rule RRMP62A does provide some of the relief sought. However, in my opinion there remains some ambiguity as to the wording of this rule which would be addressed via the relief sought in my evidence at paragraph 46.

Source Protection

8. In terms of the Source Protection provisions, the relief sought related to the SPZ maps as well as minor amendments to achieve consistency across the plan (eg with respect to matters of control / discretion) and to reflect the recommendations of the Joint Working Group. In terms of the minor amendments these have largely been accepted by HBRC officers in the s42A addendum, except as noted below:
9. Obj TANK 9: Amendments have been made to this objective in response to evidence by others¹ in order to that the objective is written as an outcomes statement. I support this approach but note that wording relating to managing risks to the source water has been removed. In my opinion, managing risks to the source water is a key part of the source protection framework and the objective should reference both suitability for human consumption and that risks are appropriately managed.

¹ Mr St Clair evidence paragraph 44-48, on behalf of Winegrowers

10. As set out in my evidence at paragraphs 54-56, I consider that Policy TANK 7, which establishes a mechanism by which Source Protection Zones (**SPZs**) can be updated via a consent process, is no longer appropriate given that the SPZ maps are to be maps within the Regional Plan. Any updates to the SPZ maps will therefore need to be subject of a Plan Change process. Therefore Policy TANK 7 needs to be redrafted to refer to Source Protection Extents.
11. With respect to the SPZ Maps, I refer to Mr Chapman’s evidence which seeks a different SPZ extent to that notified. HBRC officers have stated that the SPZ extent sought by the Council is overly conservative. The spatial extent definition is not within my area of expertise. However, from a planning perspective, I consider that a precautionary approach would be appropriate in terms of managing source water risks and would not be inconsistent with the Objective TANK 4 and Policy TANK 6.
12. I acknowledge that “regulatory burden” may be a consideration against a more conservative SPZ when it is to be used in a regulatory manner as is proposed in PC9. Where the SPZ may be increased in spatial extent in the unconfined aquifer area, there is no increased regulatory burden as the SPZ Rule provisions have the same activity status as activities over the unconfined aquifer. Where the SPZ may be increased in spatial extent in the confined aquifer area, the implications of an activity being located in an SPZ has the following outcome:

Activity	Status if not in SPZ in Confined Aquifer	Status if in SPZ in Confined Aquifer Area
Bore Drilling	Controlled	Restricted Discretionary
Decommissioning of Bores	Permitted	Restricted Discretionary
Feedlots and Feedpads	Permitted	Restricted Discretionary
Animal Effluent	Controlled	Discretionary
New Sewage Systems	Permitted	Restricted Discretionary

13. I consider that the change in activity status as noted above is not a significant cost burden on the person undertaking the activity, particularly noting that the Permitted Activity rules are not “zero cost”. For example, to achieve Permitted Activity status for a New Sewage System requires compliance with some

21 criteria including advanced primary treatment and maintenance in accordance with manufacturers recommendations.

Stormwater provisions

14. The relief sought by the Councils was primarily minor corrections noting that the provisions had been developed in collaboration with both Councils. The relief sought in my primary evidence statement has been accepted by the s42a addendum report except that:

- (a) Policies 28(j) and 31(c) appear to be directing amendment to District Plans which I consider is an inappropriate policy direction in a Regional Plan;
- (b) Rule TANK 19 provides for stormwater from individual properties to be considered as a Permitted Activity. The s42A addendum noted that the intent is to require connection to networks where these are available, instead of developers creating a discharge to land as a Permitted Activity. The s42A addendum noted some difficulties with the relief suggested in my evidence which I do not disagree with. Regional Council officers have recommended deletion of the Permitted Activity criteria relating to the availability of reticulated stormwater networks and stated in their s42A addendum report that the conditions for stormwater discharges to land have been strengthened so the options for a developer trying to evade connecting to a Territorial Authority network will likely result in the activity being a Restricted Discretionary Activity under Rule 20. I agree with, and support, this intent, however my interpretation of Rules 19 and 20 is that this intent is not achieved as any property with less than 1,000 m² area impervious land could discharge to land as a permitted activity under Rule 19.
- (c) Rule TANK 21: The relief proposed in the s42A addendum report only partly addresses the matters raised in my evidence. In my opinion, condition a(ii) should be amended to read "*cause or contribute to flooding of any property, except where stormwater may be directed to a primary or secondary flow path*". This would then cover the situation of open watercourses which are used for conveyance of stormwater as a primary as well as secondary flow path.

- (d) For the same reason as set out in my primary evidence paragraph 94, I find the s42A addendum addition of clause (vi) to TANK 21 to be problematic. I understand the intent of this clause is to address the matters raised in my evidence, but note that a literal interpretation would mean that if any sewage, blackwater or greywater of any extent were detected in the stormwater system it would not meet the controlled activity status. I consider that this would be addressed by amending clause (a) of TANK 21 to read *“The diversion and discharge shall not ... (vi) contain any discharges from a stormwater network or part thereof that includes a direct connection from a sewage, blackwater or greywater system to the stormwater network”*.

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Summary of evidence by Brett Chapman for Hastings District Council

Dated 21 June 2021

Introduction

1. My name Brett Chapman and I am the 3 Waters Manager for Hastings District Council (**HDC**). The nature of my role, and agreement to abide by the Code of Conduct for Expert Witnesses, is set out in my evidence dated 11 May 2021, which deals primarily with HDC's role as a drinking water supplier, and how this is affected by PC9. This statement summarises that evidence.
2. I note that Hawke's Bay Regional Council (**HBRC**) filed evidence from Pawel Rakowski in relation to parts of my evidence dealing with the appropriate mapping of Source Protection Zones. I therefore focus particularly on that issue given it is actively contested.

Water Supply in Hastings

3. In the Heretaunga Plains, municipal suppliers, industries, commercial operators and individuals draw water from the Heretaunga Plains Aquifer which is principally fed from the Ngaruroro River. Nine of HDC's 10 bores draw from the Heretaunga Plains Aquifer, with only Brookvale bore drawing from the Te Mata Aquifer. My evidence sets out the location and characteristics of each bore.
4. The allocation for Hastings water supply has reduced by approximately 6 million cubic metres annually since 2014, as a result of decommissioned or reduced takes

at 2 bores. This is despite substantial growth in the number of properties being supplied. Supply to an increased number of people from a reduced allocation is the result of a number of efficiency initiatives undertaken by HDC since 2013. There are also planned works involving network wide pressure reduction which will see a further reduction in overall leakage.

5. While these planned efficiency measures provide headroom within the existing allocation, it does mean there is limited ability to make further efficiency gains without substantial further investment over and above the current programme of works to fund an accelerated programme. The anticipated population growth and demand is now increasing overall usage and there is no guarantee that long term demand will necessarily be able to be met within the existing allocation.

Drinking Water Safety

6. As a water supplier, HDC is tasked with ensuring that the water we deliver to our communities is both adequate and safe. These obligations apply in existing legislation and will soon be expanded on through the Water Services Bill. I note the Bill is currently at the Select Committee stage, as it was when my evidence was filed in May 2021.
7. The Bill will require suppliers to have a source water risk management plan which identifies risks to sources of drinking water.
8. One of the key principles of drinking water safety is to understand the risks that exist or could occur that could lead to contamination of the water such that it could create unacceptable health risks to people. The consequences of getting this wrong include widespread illness and even death.
9. One of the fundamental principles of drinking water safety is to protect the sources of drinking water that we use every day. To do this, we need to understand what types of activities and events could impact on water quality and where the interaction between these risks and our source waters occur. These principles underpin the framework for establishing Source Protection Zones (**SPZs**).
10. The perception that groundwater is immune from contamination has been well and truly debunked with the Havelock North contamination event in August 2016. This event is relevant to the discussion about the science that is used to establish the extent of SPZs and the reliance we place on science to determine risk.

11. As we know, the impact on Havelock North and the wider Hastings community was catastrophic with over 5000 people becoming ill with campylobacteriosis, over 50 hospital admissions and the event contributing to 4 deaths. The situation at the time was that the source water from the aquifer in Brookvale Rd was protected from the land and activities above, and the science that had been undertaken to establish the nature of the aquifer; that is, the hydro-geological investigations and the age testing of the water, showed that be so.
12. Science has its place in drinking water safety and indeed we rely on data and analytics to better approximate where our source water comes from and where it travels on its journey to our taps. I use the word approximate deliberately because the modelling undertaken is not an exact science and yet we are debating the location of a line on a map to determine risk.
13. The evidence from the HBRC scientists essentially states that their model provides better certainty than the work undertaken by Tonkin & Taylor in their work with HDC following the Havelock North contamination event. Prior to August 2016, no one had any information on source protection on the Heretaunga Plains and that is a failure of both agencies.
14. HDCs initial work was guided by the HB Drinking Water Joint Working Group that was established in the wake of Havelock North and HBRC is a participant in that group. The work that HBRC undertook on modelling the SPZs was not directed by the Joint Working Group and was not requested by HDC as we were satisfied with the SPZ delineation for our drinking water purposes using an analytical approach undertaken by independent experts.
15. As a water supplier, the responsibility sits with HDC to determine where we consider the source protection zone to be and we have used outputs from the numerical and analytical analysis to determine that. Our powers do not extend to controlling activities that occur within this zone of interest and we require the support of other agencies to ensure that risks are identified and activities are either restricted, controlled or where necessary, prohibited.
16. Of significant concern to water suppliers are the impacts of events that move us from a “business as usual” state to one of extreme uncertainty. Severe flooding and earthquakes can dramatically change the behaviour of the environment and can cause contaminants to be released into our sources of drinking water. These events

are unpredictable and not always within the bounds of modelling. Keeping contaminants of concern outside of our SPZs minimises the potential for accidents to occur and requires ongoing surveillance to ensure contaminants and risks are managed.

17. I cannot say whether I consider one or other set of analysis to be more accurate as I understand there are limitations with both methods of evaluation. A line on a map determining a boundary does not reflect the true nature of a source protection zone. The boundary is at best fuzzy and could well be more or less than a line will depict.
18. We are therefore recommending adopting a conservative and precautionary approach to source protection using the combined SPZ as submitted in my evidence. We know that the aquifer environment is not homogeneous in structure, is ever changing and is never static in how it functions. Increasing and decreasing draw-off from wells, seasonal variations and environmental influences alter how water travels underground and we can never accurately determine those changes within a model or in real-time. At best we can be cautious in our approach.
19. In summary, there is a duty of care embodied within the 6 Principles of Drinking Water which extends from the catchment to the tap. Source protection zones are the first barrier in a multi-barrier approach to safe drinking water and we must ensure that this barrier is protected and not compromised.

Conclusion

20. I am happy to respond to any queries regarding the above or my evidence in chief, including as to stormwater management in Hastings, as set out in the Appendix to my evidence.

Brett Chapman
Hastings District Council

Before an Independent Hearing Panel

In the matter of the Resource Management Act 1991

And

In the matter of Proposed Plan Change 9 to the Hawke's Bay Regional Plan
(Tūtaekurī, Ahuriri, Ngaruroro and Karamū Catchments) (**PC9**)

Summary of evidence by Cameron James Drury on behalf of Hastings District Council and Napier City Council

21 June 2021

INTRODUCTION

1. My name is Cameron Drury. I was engaged by Hastings District Council (**HDC**) and Napier City Council (**NCC**) to provide planning advice in relation to Plan Change 9 to the Hawke's Bay Regional Resource Management Plan (**PC9**). My qualifications and expertise were set out in my evidence dated 11 May 2021.
2. That evidence also states that I have read and agree to comply with the Expert Witnesses Code of Conduct contained in the Environment Court of New Zealand Practice Note 2014. That applies equally to this summary.
3. My evidence focused on:
 - (a) Proper consideration of existing investment (POL TANK 37(d))
 - (b) Provision for future opportunities / requirements of a limited nature (POL TANK 37 and Rule TANK 12)
 - (c) Purpose and sequencing of the Stream flow maintenance and habitat enhancement schemes (POL TANK 39)
 - (d) Timeframes around Ngaruroro River Schemes (POL TANK 41)
 - (e) Groundwater Management Review (POL TANK 42)
 - (f) Transferability of water permits for food processing (POL TANK 48)

4. The specific changes I recommend are set out in the track change version of PC9 appended to Ms Sweeney's evidence.
5. I note that since filing my evidence, I have read the Section 42A Addendum Report, however my evidence does not appear to have been responded to at all by the officers. There is therefore nothing further I need to respond to from that document.

PROPER CONSIDERATION OF EXISTING INVESTMENT

6. The '90 million cubic meters per year' referenced in Policy 37 is described in the Section 42A Report, para 1332, as "essentially [HBRC's] best estimation of current levels of Actual and Reasonable use across the Heretaunga Plains". This is not a solid basis on which to decide a 'limit'. The term 'target' is more accurate and appropriate. A 'limit' should be the product of the process in Policy 42.
7. The Councils are also concerned that neither the definition of Actual and Reasonable, nor POL TANK 37, contemplates a situation where an activity has not been making use of the full allocation of its permit for valid reasons.
8. With POL TANK 37 preventing regard being had to the value of investment, it is contrary to s104(2A) of the RMA and places officers in a position of needing to reconcile a policy and a statutory obligation which pull in different directions.
9. I provided amendments to POL TANK 37 to enable a two-step process. The amendments do not change the starting point i.e. Actual and Reasonable as defined. What they do is enable the decision maker to meet its obligations under s 104(2A) in a guided fashion and provide a small window of opportunity for consideration, in line with outcomes sought in the RPS, of applications where, for whatever reason, the previous allocation has not been fully utilised.

PROVISION FOR FUTURE OPPORTUNITIES / REQUIREMENTS OF A LIMITED NATURE

10. PC9 should retain the opportunity for new consents to be granted where there would be significant social, economic and/or environmental benefit. A new policy (POL TANK 37A) and a change from Prohibited to Non-Complying activity status was proposed.
11. The new policy strictly confines the class of activities that might be eligible for consent to those that reflect outcomes and priorities identified in the RPS.

12. A policy that at least enables the consideration of outcomes identified and prioritised in the RPS is clearly more consistent with the RPS than intentionally prohibiting such consideration as PC9 currently proposes. The opportunity to at least consider proposals also avoids unintended consequences.
13. The pros and cons of a prohibited vs a non-complying activity was considered in the Section 32A Report, where the author stated on page 286 that it is finely balanced. The analysis did not, however, consider the ability to mitigate the cons through the inclusion of specific policy guidance. With a such a policy in place, a prohibited activity status is not justified.
14. As a minimum, applications for municipal water supply purposes should not fall to being Prohibited under Rule TANK 12.

PURPOSE AND SEQUENCING OF THE STREAM FLOW MAINTENANCE AND HABITAT ENHANCEMENT SCHEMES

15. A conservation strategy is more appropriate than requiring municipal supply takes to participate in a scheme or cease abstraction upon a minimum flow.
16. Both cessation and conservation strategies are tools in managing effects during low flows, and it is not necessary for a Plan to select only one. In this regard, with OBJ TANK 16 setting priority uses, it is valid for a different tool to be used for a first priority use and another for lower priority use. In light of the essential and first priority nature of municipal takes under OBJ TANK 16, and that water conservation strategies can be effective, a water conservation approach rather than cessation is a genuine option for municipal takes.
17. This approach is also more consistent with the direction set down in POL LW2 of the RPS, which directs priority to be given to urban water supply and water supply for key social infrastructure facilities when preparing Regional Plans.

TIMEFRAMES AROUND NGARURORO RIVER SCHEMES

18. POL TANK 41 relates to HBRC undertaking further investigations around a water storage and release scheme to off-set the cumulative stream depletion effect of groundwater takes on the Ngaruroro River. No timeframes are specified though.
19. The feasibility of such a scheme will have a significant influence on the management of the groundwater resource, and with no timeframes specified, the Councils

submitted that this should be undertaken over the 10 year period leading into the groundwater management review under Policy 42.

GROUNDWATER MANAGEMENT REVIEW

20. The Councils' submission sought that POL TANK 42 be amended to require consideration of 'new information on the long term sustainable equilibrium of the groundwater resource that accounts for annual variation in climate and prevents seawater intrusion'.
21. As acknowledged in paragraph 1475 of the Section 42A report, further investigations need to be undertaken to fully understand the water available, however none of the items to be considered in POL TANK 42 currently consider this. The relief sought is considered to provide key information in better understanding how the resource should be managed moving forward.

TRANSFERABILITY OF WATER PERMITS FOR FOOD PROCESSING

22. POL TANK 48 relates to the change or transfer of water permits. The Councils generally support the approach of considering the decline of applications when the change or transfer is 'away from irrigation of the versatile land of the Heretaunga Plains for primary production especially food production' but is cognisant that water is not only required to grow food, but to also process it.
23. Food processing is requested to be included as an exemption under subsection (c) of POL TANK 48. This would be better aligned with District Plans and gives better effect to the RPS.

Cameron Drury

21 June 2021

Before an Independent Hearing Panel

In the matter of the Resource Management Act 1991

And

In the matter of Proposed Plan Change 9 to the Hawke's Bay Regional Plan
(Tūtaekurī, Ahuriri, Ngaruroro and Karamū Catchments) (**PC9**)

Summary of evidence by Mark Anthony Clews for Hastings District Council

Dated 21 June 2021

1. My name is Mark Anthony Clews and I am the Principal Advisor, District Development, at the Hastings District Council (**HDC**). My qualifications, experience and involvement in the various strategies and plan or policy changes relevant to the current hearing of PC9 are set out in my statement of evidence dated 11 May 2021. HDC has worked closely with Napier City Council (**NCC**) in terms of the Councils' position on PC9, and in the preparation of evidence for this hearing.
2. My evidence sets out the strategic context for the Councils' submissions. This includes the Hawke's Bay's particular reliance on the versatile soils of the Heretaunga Plains, and the critical importance of water in the land-based production and processing economy that is critical for the Region. Primary production and directly related industry employs nearly 14,000 people and generates over \$1 billion annually. For this reason the Council endorses a pragmatic and precautionary approach, in terms of effects on people and communities, while striving to make meaningful progress on dealing with any over-allocation, particularly in terms of water in terms quantity.
3. The Councils do not seek to minimise or resile from their obligations to do their bit both in terms of quantity and quality to give effect to Te Mana o Te Wai. Territorial authorities however, have unique demands compared to other abstractors – in particular, in relation to its role in municipal supply and in terms of its obligations

under the National Policy Statement on Urban Development (**NPSUD**) to actively provide for growth. The changes they seek to PC9 largely reflect these, as they seek to ensure priority and protection for municipal and community water supplies, and flexibility to respond to changing growth demands in terms of allocation and access to freshwater.

4. A point I wish to emphasise in my evidence is the obligation under the NPSUD for all three Councils – HDC, NCC and HBRC - to actively plan to accommodate urban growth demand in a way that improves housing affordability and is supported by planning and necessary infrastructure. The Napier Hastings Urban Area is Tier 2 Urban Environment under the NPSUD and local authorities that share jurisdiction over urban environments in tier 1 and 2 Urban Environments must work together when implementing the NPSUD (Policy 10). They are required to prepare a Future Development Strategy every 6 years (reviewed every 3 years if needed), which provides development capacity for expected demand over the next 30 years.
5. The current version of this for the Heretaunga Plains is HPUDS 2017, however information for Statistics New Zealand indicates growth predictions in that document are significantly understated. The next version will likely put expected demand at significantly higher than what is currently provided for. A key issue for the Councils is that municipal supply is tagged to HPUDS 2017 levels which creates a real risk of an imminent conflict with the obligations under the NPSUD to provide and plan for necessary infrastructure.
6. In endorsing the hierarchy needs expressed in Te Mana o Te Wai I point out that with an increasingly scarce resource some rationing between needs and demands is inevitable. In that context, meeting statutory obligations to sustain growing communities must occur ahead of individual commercial endeavours even if pre-existing.
7. As well as addressing that specific issue, the Councils are concerned about how quickly the community can sustain the changes required to give effect to Te Mana o Te Wai. They accept however that the improved understanding of the freshwater resources in the Heretaunga Catchments and their interconnected nature, means that there is a need to take a greater conservation and demand management approach to reduce over allocation across all users. Within that context the Councils, while supporting the pragmatic stages approach represented by PC9, have sought to identify changes to PC9 which more generally will assist in a pragmatic way to

maintaining economic wellbeing and ensuring growth can be provided for – as required by the NPSUD and other statutory obligations – within the restrictions of the available resource (including possible storage) and in light of the obligations of the NPSFM 2020.

8. The detailed changes sought by the Councils are set out in the track change version appended to the evidence of Ms Sweeney, and are discussed specifically in the evidence of Ms Sweeney and Mr Drury.
9. In summary, the HDC and NCC generally support the pragmatic stepped approach proposed by PC9, however they consider greater recognition of the priority and specific needs of people and communities for municipal and community supplies is needed.

Mark Clews
BRP Hons 1, MNZPI
Principal Advisor District Development
Hastings District Council

Before an Independent Hearing Panel

In the matter of the Resource Management Act 1991

And

In the matter of Proposed Plan Change 9 to the Hawke's Bay Regional Plan
(Tūtaekurī, Ahuriri, Ngaruroro and Karamū Catchments) (**PC9**)

Summary of evidence by Paulina Ximena Wilhelm Moreno for Napier City Council

Dated 21 June 2021

1. My name is Paulina Wilhelm and I am the Manager, City Development, at the Napier City Council (**NCC**). My qualifications and experience are set out in the evidence I prepared for this hearing dated 11 May 2021.
2. My evidence is largely in support of that of Mr Clews for Hastings District Council. I have read his summary statement and agree that it also represents the position for NCC.
3. By way of update to my evidence, I note that NCC has completed consultation on its Draft Long Term Plan and is set to be adopted on 30 June 2021. The important strategic goals in relation to water management and growth, and allocation of significant funds for water supply and stormwater improvements, are not expected to be altered significantly from what was notified.
4. NCC is supportive of the overall direction of PC9. NCC is already taking a proactive approach to maximise efficiencies in its municipal water use. NCC is conscious that it is required by law to provide a safe and adequate water supply to its residents and to enable growth. The changes to PC9 sought are largely to ensure NCC can meet all of its various obligations, while still achieving the sustainable management of water resources in the TANK catchment.

5. I am happy to answer any questions the Panel may have arising from my evidence or in relation to NCC's submissions.

Paulina Wilhelm
21 June 2021

Before an Independent Hearing Panel

In the matter of the Resource Management Act 1991

And

In the matter of Proposed Plan Change 9 to the Hawke's Bay Regional Plan (Tūtaekurī, Ahuriri, Ngaruroro and Karamū Catchments) **(PC9)**

Statement of evidence by Russell Bond on behalf of Napier City Council

Dated 21 June 2021

1. My name is Russell Bond and I am the Manager Water Strategy for Napier City Council (**NCC**). I am primarily responsible for the Council's three water services, that is, drinking water, stormwater and wastewater services. My role, qualifications and experience are set out in my evidence dated 11 May 2021. My evidence does not address the content of NCC's submission on PC9 but rather provides information to assist the Panel in understanding the context in which PC9 will be applied 'in real life'.
2. My evidence first addresses how water supply is managed in Napier City, current and future efficiency gains and plans for anticipated growth. All of Napier's reticulated water (which services 93% of the population) comes from the Heretaunga Plains aquifer through a series of bores, pump stations, reservoirs and pipes. There is one consent for public water supply which expires in May 2027.
3. In terms of efficiency measures, NCC uses a summer water restriction programme to manage seasonal demands to ensure consent limits are met. It also has a programme to detect and address leaks and work in this area is ongoing. The majority of water connections are unmetered, so individual water consumption and leakage is uncertain. However the monitoring that has been done indicates that NCC has reduced leakage in the system overall to less than Infrastructure Leakage Index 4, which is included as an efficiency benchmark for municipal water supplies in PC9.

4. I have read and agree with Mr Chapman's evidence dated 11 May 2021 regarding the obligations of water suppliers currently and under the Water Services Bill, and the importance of Source Protection Zones for existing and future bores. NCC's submission supported the extent of the SPZs around Napier's bores.
5. In terms of stormwater, NCC holds a number of consents for diversion and discharge of stormwater, and also manages stormwater activity through a 2020 Bylaw and a Code of Practice for Subdivision and Land Development. In terms of NCC's planning and investment for stormwater infrastructure, there are several major projects planned in the Draft Long Term Plan, particularly designed to improve water quality.
6. In conclusion, NCC has prioritised resources and promotes that the Water Activities are its number one priority. This is reflected in the current Draft LTP 2021/31 with 50% of the capital expenditure programme dedicated to Water Activities. The water objectives from the Community are very clear and ask the Council to provide "safe", "clean", "resilient" & "sustainable" water services.

Russell Bond

21 June 2021