

Document Information

Report To: Hearings Commissioners
Meeting Date: Wednesday, 14 October 2020
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1. PURPOSE OF REPORT

This report has been commissioned by the South Waikato District Council (“Council”). It is one of two hearing reports prepared under Section 42A of the Resource Management Act 1991 (the RMA) to provide recommendations to the Hearings Panel appointed by Council to hear and decide on all submissions and further submissions received on Proposed Plan Changes 1 and 2 to the Operative South Waikato District Plan (“the ODP”). This report relates to Proposed Plan Change 2 – Infrastructure Management (“PC2”) to the ODP.

PC2 was publicly notified on 13 May 2020 along with Proposed Plan Change 1 - Putāruru Urban Growth and Related Matters (“PC1”) and submissions were received until 24 June 2020. A period for further submissions followed from July until July 2020. In total, five submissions and no further submissions were lodged on PC2. Decisions on 31 submission points are required from Council.

The following assessment has been prepared by Council's Planning Staff. It reflects our understanding of the issues as at 22 September 2020 and also relies on the evidence of the infrastructure engineering expert, Mr Campbell McGregor from Harrison Grierson Consultants. The recommendations in this report should be generally consistent with those presented in the other hearings report dealing with PC1, since they were prepared in collaboration between the authors.

The assessment and recommendations below also record a statement of reasons in relation to the evaluations required by Section 32 of the RMA. Council produced a report titled ‘Section 32 Report - South Waikato District Plan’ – Plan Change 2 (Infrastructure Management) dated April 2020 that was released when PC2 was publicly notified.

Where a submission point has been ‘accepted’ or ‘accepted in part’ resulting in a recommendation to alter the wording of an objective, policy, rule or other provision, the reasons for that and a summary statement in relation to the Section 32AA evaluation conducted will be provided. A full Section 32AA evaluation in support of the recommended alteration to the provision will be included in a report that will accompany the release of Council decisions on public submissions that will contain the updated Section 32AA evaluations.

Where a submission point is ‘rejected’, or where it is ‘accepted’ or ‘accepted in part’, but where no alteration to the wording of a provision is recommended, then the evaluation recorded in the April 2020 version of the Section 32 report remains Council’s evaluation.

This report addresses the submissions and further submissions received from the following parties, some of whom indicated that they wished to be heard in support of their submission.

Submission Number	Submitter's Name	Address
1	Ministry of Education (MoE)	Hamilton
2	Fire and Emergency NZ (FENZ)	Hamilton
3	DPS Developments Limited (DPS)	Tauranga
4	Raukawa Charitable Trust (Raukawa)	Tokoroa
5	Michael Jones	Tokoroa

PURPOSE OF PC2

The Operative South Waikato District Plan became operative in July 2015. Subsequently, through the operation of the plan provisions, it has become clear that the Plan lacked a robust basis for ensuring that new development with significant demands for either reticulated water and/or reticulated wastewater would be managed to avoid significant impacts on levels of service for that infrastructure, in a manner that ensures Council remains in compliance with the requirements of the regional resource consents for that that infrastructure. The absence of appropriate provisions could undermine the potential for residential and economic growth within the district for existing and new areas zoned for that growth and result in a significant risk to the health and safety of the community and to the wider environment. A Plan Change process was initiated to address the issue.

STATUTORY FRAMEWORK FOR PC2

The Hearings Panel decision-making on PC2 fits within a comprehensive statutory framework established under the RMA, in particular sections 5, 31, 32 and 72 - 75 of the RMA. These sections are discussed further in this report.

In summary, the Hearings Panel needs to be satisfied that PC2, and the relief sought by submitters on PC2:

- (a) Is in accordance with:
 - (i) the Council's function as set out in section 31 RMA;
 - (ii) the purpose and principles of Part 2 and 3; and
 - (iii) the Council's duty under section 32 RMA; and
- (b) Gives effect to:
 - (i) any relevant national policy statement; and
 - (ii) any relevant national environmental standard; and
 - (iii) the Operative Waikato Regional Policy Statement 2016 ("RPS").

Part Two

Section 74(1)(b) of the RMA provides that plans (including plan changes) must be prepared "in accordance" with the provisions of Part 2. The role Part 2 plays in decision-making processes for plan changes at the district level is refined by the Supreme Court in *Environmental Defence Society Incorporated v The New Zealand King Salmon Company Limited* [2014] 1 NZLR 593 ("King Salmon"). The Supreme Court held that when developing plans, there is generally no need to refer back to Part 2 of the RMA if there is no invalidity, incomplete coverage or ambiguity in the higher order planning documents.

This is because the higher order planning document is assumed to already give substance to Part 2. However, if one or more of the three caveats apply, reference to Part 2 may be justified and it may be appropriate to apply the overall balancing exercise.

[James, provide comment here on whether there is any uncertainty of meaning (ambiguity) or incomplete coverage in the RPS. In particular, is there any aspect of the RPS that does not “cover the field” in relation to any matters relevant to PC2. If there is any ambiguity, the Panel will have to consider whether Part 2 provides assistance in dealing with the matters not covered. If none of the three caveats apply to the RPS, then I suggest you say something along the lines of:

“In the present case, there is generally no ambiguity or incomplete coverage in the relevant planning framework (including the RPS) such that recourse to Part 2 is not required. Accordingly, an assessment of PC2 against Part 2 is not required.”

2. PLANNING FRAMEWORK FOR PC2

2.1 District Plan Objectives and Policies

Infrastructure and urban Issues

The District’s reticulated infrastructure networks and facilities are part of the “physical resources” that need to be sustainably managed under Section 5 of the RMA. In Chapter 2 of the ODP, one of the key resource management issues for the District (Issue 6) is stated as being:

“the need to enable the district’s new and existing network utilities and infrastructure and major industrial sites (including adequate connections to services) to operate efficiently and effectively to provide for the community’s social and economic needs, whilst managing potential adverse environmental effects from those activities, and avoiding ad hoc development of sensitive or incompatible land uses close to existing networks and sites.”

In terms of what constitutes an ‘environmental effect’, the issue above must be read with district plan Issue 1 and Issue 2 set out below.

Chapter 4 of the ODP, the framework for managing the District’s urban areas, has a relationship with Issue 6. The following objective is considered relevant in considering the PC2 submissions:

4.2.1 *To have attractive, functional, safe and thriving townships built on the unique qualities of their people, industries, history and natural strengths.*

The following policies are also relevant:

4.3.2 *Enable the provision and expansion of the network utilities and infrastructure and industrial facilities, that are necessary to underpin the operation and prosperity of the District’s urban areas while managing new subdivision and land uses that may potentially conflict with, restrict or compromise the existing operation of the District’s key industrial sites.*

4.3.16 *Enable emergency service facilities to establish and operate throughout the district by implementing appropriate development controls.*

In conjunction with Chapter 4, Chapter 7 of the ODP sets out the framework for managing the District’s infrastructure and relates to Issue 6. The following objective is considered relevant in considering the PC2 submissions:

7.2.3 *To provide for the sustainable, secure and efficient use and development of infrastructure within the District, while seeking to avoid, remedy or mitigate adverse effects on the environment recognising the technical, locational and operational requirements and constraints of the infrastructure concerned.*

The following policy is also relevant:

7.3.10 *Manage new subdivision, use and development that may adversely affect the existing operation of the District's key industrial sites, airport, network utilities and infrastructure and related activities.*

Matters of significance to Māori/ Te Ture Whaimana - The Vision and Strategy

Issue 1 and Issue 2 must be read in conjunction with Issue 6 above and must also be read as distinct issues. Issue 1 is as follows:

“the degradation of the health and well-being of the Waikato River.”

The following extracts from the explanation of Issue 1 are considered relevant when considering the PC2 submissions:

This degradation needs to be addressed as does meeting the challenge of the Vision and Strategy for the Waikato River (Te Ture Whaimana o Te Awa o Waikato).

It is also essential to recognise the strategic importance of the Waikato River to the economy and communities of its catchment. The Waikato River is an important resource that requires management as a degraded river cannot provide for the social, economic and cultural wellbeing of the people and communities of the district.

The health and wellbeing of the Waikato River and other waterways in the district have been degraded both directly and indirectly over recent decades. This degradation includes declining water quality, loss of indigenous biodiversity, loss of access and declining water availability and is the result of activities both on land and in the water bodies themselves. Waterways continue to face increasing demands for use, such as takes for irrigation and drinking water, hydro power generation, and assimilation of discharges from towns, agriculture and other industry; as well as pressures arising from land management practices, land use change and intensification. Holistic and integrated management of land and water resources is critical to reversing declining trends.

....Whilst the health and wellbeing of the Waikato River affects the community as a whole, the river is of special importance to the Tangata Whenua. Raukawa consider that the degradation affects the mauri of the waterways in the catchment, wāhi tapu and other sites of significance along the margins of these waterways, and the health and wellbeing of Raukawa and the wider community.

The Ngāti Tūwharetoa, Raukawa and Te Arawa River Iwi Waikato River Act 2010 established a co-management regime for the upper Waikato River, which includes all of the Waikato catchment within the South Waikato District. This regime sees partnerships established between Tangata Whenua and the Crown, the regional council and district councils. Joint management agreements between Raukawa and the Council, and between Te Arawa River Iwi and the Council in relation to management arrangements for the River and activities within the catchment affecting the River will be developed and will guide the partnership.

Issue 2 is as follows:

“better recognise and provide for Tangata Whenua values in resource management decision-making.”

The following extracts from the explanation of Issue 2 are considered relevant when considering the PC2 submissions:

Raukawa exercise mana whenua and the rights and responsibilities of kaitiakitanga within their rohe, which includes the entire South Waikato District. Recognising and providing for the relationship of Māori and their culture and traditions with their ancestral land, water sites, wāhi tapu and other taonga is a matter of national importance under the RMA (section 6(e)). Section 7 of the RMA requires local authorities to have particular regard to kaitiakitanga and to the protection of recognised customary activities, and Section 8 requires the principles of the Treaty of Waitangi to be taken into account.

Legislation has recently introduced co-management responsibilities for the Waikato River and its catchments, heralding a new level of relationship and engagement between Tangata Whenua and local and central government.

The district plan has sought to recognise and provide for the relationship that Raukawa have with the natural and physical resources of the district, and to better safeguard the significant Tangata Whenua values of the district. Issues of concern to Raukawa include both environmental issues and process issues. Less relevant to the district plan but equally important to Raukawa are social issues such as access to and affordability of housing, and implementation and understanding of the principles of the Treaty of Waitangi. Raukawa places significant value on its relationship with its many partners and stakeholders, including industry, farmers, the Council and the community, and seeks to work in a practical and pragmatic way with all sectors to achieve the environmental aspirations of the iwi.

The Raukawa understanding of the natural environment of the South Waikato goes back over 600 years. In this time the district has faced significant change and environmental losses.

Raukawa consider that the most important resource management matters affecting them in the South Waikato are:

- a) **Adverse effects on the health and wellbeing of waterways.** - *While there is particular emphasis on the Waikato River (as set out in Issue 1), all waters including awa (rivers), manga (streams), roto (lakes) and puna (springs) are considered taonga. The Waikato and Waihou Rivers are a source of spiritual, cultural, social and physical sustenance for Raukawa, and in turn the Raukawa role as kaitiaki embraces respect and an inter-generational responsibility for the rivers.*
- b) **The loss of wetlands** – *Wetlands are important for water quality, biodiversity, flood protection and indigenous biodiversity. They are also a traditional source of food and material (such as for building, weaving and medicines) for Raukawa. The district (and region) has lost the majority of its wetlands.*
- c) **Adverse effects on Papatuanuku** – *The land continues to be damaged through inappropriate land use practices. Impacts include historical and ongoing contamination of land, loss of productive soils and accelerated erosion.*
- d) **Poor air quality** – *Tokoroa and Putāruru airsheds do not meet the National Environmental Standards for Air Quality. Adverse effects of poor air quality include social (human health),*

- environmental and economic (cost of reducing non-compliance and potential for limiting economic growth through restrictions on new businesses if the situation is not addressed).*
- e) **Loss of indigenous biodiversity** – *There has been significant loss of indigenous biodiversity in the district. In addition to having intrinsic values, native species were and continue to be important resources to Raukawa. Plants and animals were harvested as kai, rongoa (medicine), building materials, and as dye and weaving materials for clothing and decoration. Biodiversity also provides 'ecosystem services', such as clean air and water, fertile soils and flood control which enable us to live and make a living within the district.*
- f) **Loss of cultural heritage** – *Including cultural landscapes, wāhi tapu and other sites of significance, access to places and resources (such as rongoa and mahinga kai), loss of traditional names. The district includes many wāhi tapu, wāhi taonga, and other sites of significance. Effective systems, information, and resources need to be utilised to preserve, enhance, record and provide for these historical and cultural taonga. Cultural landscape values are still largely unrecognised, poorly understood and very little protection of these values is afforded. Archaeological sites however have legal protection under the Heritage New Zealand Pouhere Taonga Act 2014.*
- g) **Barriers to sustainable marae and papakāinga development** – *There have been a number of barriers that have restricted the development of marae and papakāinga. Marae are important not only to Raukawa but also to the wider community – they are often used as meeting venues and civil defence bases for example.*
- h) **Barriers to practical and contemporary expression of kaitiakitanga** – *Includes Council processes, relationships etc. The Raukawa role as kaitiaki and mana whenua within their rohe has been diminished and continues to be adversely affected by processes such as those administered under the RMA and LGA. Inadequate and inappropriate processes mean Raukawa are involved at the end and not the beginning of processes, are insufficiently resourced to participate in a meaningful way, often lack information to be able to engage in issues, and traditional or customary knowledge and systems are marginalised. Lack of understanding of how the principles of the Treaty of Waitangi should be applied has led to poor outcomes and poor engagement generally. This applies to the community in its widest sense.*
- i) **Unsustainable development** – *There is a need to ensure that development in the district is sustainable in the long-term and meets the needs of the whole community. This includes adopting best practice urban design and low impact design principles, providing for a range of housing styles and options, and ensuring developments have access to adequate services and utilities. Many Tangata Whenua continue to live on traditional or customary lands which are often in remote parts of the district. Such areas often experience lesser levels of service than urban areas, such as roading, waste management, health and education services, public transport, telecommunications and internet access, and access to sufficient water. The provision of appropriate and accessible housing for iwi within and around the district continues to be an issue. This is a complex and important issue involving poor quality housing, inappropriate size of housing available, lack of housing available on customary lands and in papakāinga development, and insufficient assistance with new and innovative building designs. In recent years South Waikato's towns have experienced slow growth and development. This has led to largely market-driven design, instead of design and provision for all of the members of the community including young and old people. Nor has design accounted for best practice such as using Crime Prevention through Environmental Design principles.*
- j) **Failure to adopt an integrated and holistic approach to resource management** – *The current lack of an holistic approach and recognition of connections between issues. This*

applies to both providing for the linkages between elements of the environment, as well as the integration between those who have roles and responsibilities in managing the environment. This has led to adverse effects on the environment, including particularly cumulative effects.

The following objectives relating to Issue 1 and/or Issue 2 are considered relevant in considering the PC2 submissions:

3.3.1 The Health and Wellbeing of the Waikato River

To restore and protect the health and wellbeing of the Waikato River and to ensure that the objectives of the Vision and Strategy for the Waikato River are achieved.

3.3.2 Waikato River Vision and Strategy – Co-management

To achieve co-management with Tangata Whenua of the Waikato River and its catchment, to give effect to the Vision and Strategy for the Waikato River.

3.3.3 Papatuanuku/ Integrated and holistic resource management/Cumulative effects

To manage the use, development and protection of natural and physical resources in a way that recognises the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, wāhi tapu and other taonga and by enabling appropriate use of, and access to, them.

3.3.4 Cultural heritage

To recognise and provide for the cultural, spiritual, economic and social values of tangata whenua when managing the District's natural and physical resources.

3.3.6 Kaitiakitanga

To acknowledge and provide for the kaitiaki role of tangata whenua when assessing proposals for subdivision, use and development.

3.3.7 Treaty of Waitangi

To ensure that the principles of the Treaty of Waitangi are taken into account in all aspects of resource management within the South Waikato District.

4.2.8 To identify and address possible effects from urban activities on the health and wellbeing of the Waikato River and its catchments during decision making.

The following policies are also relevant:

3.4.1 *Recognise and provide in decision-making for the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, wāhi tapu (sacred sites), and other taonga (treasures), including by improving public access to rivers and other waterways.*

3.4.3 *Give effect to the Vision and Strategy for the Waikato River when considering resource consent applications and in reviewing, changing and administering the district plan.*

3.4.5 *Give effect to co-management through establishing processes for engagement and early involvement in key processes, including RMA policy and plan making and resource consent processes, to ensure matters of significance to Māori are fully considered.*

3.4.6 *Have regard to relevant planning documents such as the Raukawa Environmental Management Plan when considering resource consent applications and in reviewing, changing and administering the district plan.*

3.4.7 *Identify sites of cultural, traditional, and spiritual significance to Māori, including cultural landscapes and ensure appropriate protection is provided to them through agreed plan making and resource consenting processes.*

4.3.15 *To achieve the Vision and Strategy for the Waikato River by managing subdivision and land use within the district's towns located within the River catchment in a way that restores and protects the health and wellbeing of the Waikato River, including by:*

- a) *controlling hazardous substances use and storage*
- b) *including standards for earthworks, silt and stormwater control*
- c) *managing activities in towns*
- d) *requiring esplanades reserves or strips.*

7.3.21 *Manage infrastructure development to ensure it does not adversely affect the health and wellbeing of the Waikato River.*

2.2 National Policy Statements (NPSs) and National Environmental Standards (NESs)

Pursuant to section 75(3)(a), a proposed plan change must also give effect to any relevant national policy statement and any relevant national environmental standard.

The NPSs and NESs that are relevant to Plan Change 2 are:

National Policy Statement on Freshwater Management (“NPSFM”) 2020 – in force from 3 September 2020.

The main concept underpinning the NPSFM is Te Man o te Wai which refers to the “fundamental importance of water and recognises that protecting the health of freshwater protects the health and well-being of the wider environment and protects the mauri of the water.” (section 1.3).¹

The objective of the NPSFM is to ensure that resources are managed in a way that prioritise:²

- (a) the health and well-being of waterbodies and freshwater ecosystems;
- (b) the health needs of people;
- (c) the ability of people and communities to provide for social, economic and cultural well-being, now and in the future.

The NPSFM sets out fifteen policies for achieving the above objectives.

The relevant part of the NPSFM that relate to functions of territorial authorities is as follows:

Every territorial authority must include objectives, policies, and methods in its district plan to promote positive effects, and avoid, remedy, or mitigate adverse effects (including cumulative effects), of urban development on the health and well-being of water bodies, freshwater ecosystems, and receiving environments.³

Council is required to implement its obligations under the NPSFM as soon as reasonably practicable.⁴

¹ National Policy Statement for Freshwater Management 2020 at [1.3]

² National Policy Statement for Freshwater Management 2020 at [2.1]

³ CI 3.5(4) National Policy for Freshwater Management 2020

⁴ CI 4.1(1) National Policy for Freshwater Management 2020

Given Council's function in CI 3.5(4), that the NPS FM applies to all 'freshwater' and to 'receiving environments'⁵, and that the matters being managed by PC2 include the effects of 'urban development', the NPS does apply. In my opinion, PC2 achieves the advancement of the matters in CI3.5(4) for the matters that are within the scope of PC2.

For clarity, the NPS FM 2014 (as amended 2017) was in effect at the time of notification and further submissions. Council had no explicit implementation functions under that NPS.

2.3 Regional Policy Statement

The Waikato Regional Policy Statement 2016 (RPS)

District Plans must also give effect to the RPS⁶.

A number of key issues that are relevant to the submissions on PC2 are addressed in the RPS including the management of infrastructure, the effects of climate change, Te Ture Whaimana, tangata whenua interests, managing the built environment and water.

The following objectives, policies and methods in the RPS are relevant in considering the PC2 submissions:

Objective 3.6

Land use is managed to avoid the potential adverse effects of climate change induced weather variability and sea level rise on:.....

- b. the built environment, including infrastructure;....*

Objective 3.9

The relationship of tāngata whenua with the environment is recognised and provided for, including:

- a. the use and enjoyment of natural and physical resources in accordance with [tikanga](#) Māori, including mātauranga Māori; and*
- b. the role of tāngata whenua as [kaitiaki](#).*

Method 4.2.3

Local authorities should:

- a. ensure appropriate processes and opportunities are established and maintained to inform relevant agencies, including neighbouring local authorities, relevant [infrastructure](#) providers, tāngata whenua and other relevant stakeholders of any anticipated regional or district plan changes or reviews, growth strategies, structure plans, and land use or subdivision consent processes which may have an effect on the interests of these parties; and*
- b. provide opportunities for meaningful involvement in such processes.*

Policy 4.3

Tāngata whenua are provided appropriate opportunities to express, maintain and enhance the relationship with their rohe through resource management and other local authority processes

Policy 6.1

⁵ CI 1.5 National Policy Statement for Freshwater Management 2020

⁶ s.75(3)(c) Resource Management Act 1991

Subdivision, use and development of the built environment, including transport, occurs in a planned and co-ordinated manner which:

- a. has regard to the principles in section 6A;
- b. recognises and addresses potential cumulative effects of subdivision, use and development;
- c. is based on sufficient information to allow assessment of the potential long-term effects of subdivision, use and development; and
- d. has regard to the existing built environment.

6A Development Principles

New development should:...

- d. not compromise the safe, efficient and effective operation and use of existing and planned infrastructure, including transport infrastructure, and should allow for future infrastructure needs, including maintenance and upgrading, where these can be anticipated;
- e. connect well with existing and planned development and infrastructure;
- f. identify water requirements necessary to support development and ensure the availability of the volumes required;
- g. be planned and designed to achieve the efficient use of water;...
- q. consider effects on the unique tāngata whenua relationships, values, aspirations, roles and responsibilities with respect to an area. Where appropriate, opportunities to visually recognise tāngata whenua connections within an area should be considered;
- r. support the Vision and Strategy for the Waikato River in the Waikato River catchment;...

Policy 6.3

Management of the built environment ensures:

- a. the nature, timing and sequencing of new development is co-ordinated with the development, funding, implementation and operation of transport and other infrastructure, in order to:
 - i. optimise the efficient and affordable provision of both the development and the infrastructure;
 - ii. maintain or enhance the operational effectiveness, viability and safety of existing and planned infrastructure;
 - iii. protect investment in existing infrastructure; and
 - iv. ensure new development does not occur until provision for appropriate infrastructure necessary to service the development is in place;
- b. the spatial pattern of land use development, as it is likely to develop over at least a 30-year period, is understood sufficiently to inform reviews of the Regional Land Transport Plan. As a minimum, this will require the development and maintenance of growth strategies where strong population growth is anticipated;
- c. the efficient and effective functioning of infrastructure, including transport corridors, is maintained, and the ability to maintain and upgrade that infrastructure is retained; and
- d. a co-ordinated and integrated approach across regional and district boundaries and between agencies; and
- e. that where new infrastructure is provided by the private sector, it does not compromise the function of existing, or the planned provision of, infrastructure provided by central, regional and local government agencies.

Policy 6.6

Management of the built environment ensures particular regard is given to:

- a. that the effectiveness and efficiency of existing and planned regionally significant infrastructure is protected;

- b. *the benefits that can be gained from the development and use of regionally significant infrastructure and energy resources, recognising and providing for the particular benefits of **renewable electricity generation**, electricity transmission, and municipal water supply; and*
- c. *the locational and technical practicalities associated with renewable electricity generation and the technical and operational requirements of the electricity transmission network.*

Method 6.6.5

Local authorities should ensure that appropriate measures are implemented to avoid adverse effects of development of the built environment on the safe, efficient and effective operation of regionally significant infrastructure. With respect to electricity transmission corridors, development of the built environment should also take into account National Policy Statements, National Environmental Standards and Transmission Corridor Guidelines as relevant to the circumstances.

Regionally significant infrastructure – includes: ...

- i. *municipal wastewater treatment plans, water supply treatment plans and bulk water supply, wastewater conveyance and storage systems, municipal supply dams (including Mangatangi and Mangatawhiri water supply dams and ancillary infrastructure.*

Method 8.3.10

Territorial authorities should, in accordance with their statutory responsibilities, manage the effects of subdivision, use and development either by statutory or non-statutory means, including through district plans, development and subdivision guidelines and structure plan by considering the following:

- a. *the availability of water, including by encouraging water conservation measures;*
- b. *avoid, remedy or mitigate the adverse effects of the sealing of known aquifer recharge areas*
- c. *development and design that minimises the potential for contaminants to enter fresh water bodies and coastal water;*
- d. *managing flows into stormwater networks including through the adoption of low impact design;*
- e. *providing for the creation and protection of esplanade reserves and/or strips and riparian habitat, including appropriately vegetated riparian margins where this will have a positive effect on a fresh water body and on its ecological, amenity and recreational values;*
- f. *the promotion of best practice stormwater management for **urban** areas, including the need for stormwater catchment plans for **greenfield** urban development;*
- g. *managing contaminant loadings (including sediment) entering stormwater networks;*
- h. *minimising stormwater entering wastewater networks; and....*

Policy 8.5

Recognise Te Ture Whaimana o Te Awa o Waikato – the Vision and Strategy for the Waikato River – as the primary direction-setting document for the Waikato River and develop an integrated, holistic and co-ordinated approach to implementation.

Policy 8.7

Ensure that the allocated water resource is used efficiently.

Te Ture Whaimana – The Vision and Strategy for the Waikato River

Te Ture Whaimana – The Vision and Strategy for the Waikato River, is deemed part of the WRPS for the matters it covers within the Waikato River Catchment.⁷ In the event of conflict, the Vision and

⁷ s.11 Ngāti Tuwhāretoa, Raukawa and Te Arawa River Iwi Waikato River Act 2010

Strategy prevails over any NPS.⁸ Further details on the content of the Vision and Strategy are provided in the assessment of submissions below. As such, PC2 must give effect to the Vision and Strategy.

In reviewing the content of submissions, it is clear that not all of the matters in the RPS have been 'given effect to' by PC2 as notified. In particular regarding matters of significance to Māori. This will be discussed further in my assessment of submission below. Despite this, PC2 largely meets the direction given by the RPS. I note the management of infrastructure better integrates with land uses, including the consideration of cumulative effects, efficiency of infrastructure is improved, and adverse effects of development are avoided for the matters managed by PC2 (including Regionally Significant Infrastructure)

SUBMISSION 1 – MINISTRY OF EDUCATION

Background

The MoE, as noted in its submission, '...has responsibility for all educational property owned by the Crown' and is '...the lead advisor on the New Zealand education system.

Assessment

The submitter notes that:

- a. The drought of 2019/2020 resulted in the closure of some schools due to a lack of water provision;
- b. The above is likely to continue to be an option (which the reporting officer interprets to mean as a result of the effects of Climate Change); and,
- c. Water and wastewater systems are already under pressure.

The submitter states that it "...supports any measures proposed to ensure that the water and sewer networks are able to cope with any additional water takes and wastewater discharges, while still providing the required level of service to the rest of the district."

Supporting the view of the MoE is Objective 3.6 of the RPS, as noted above sets out the requirement to manage land use to avoid the effects of climate change on, amongst other things, the built environment, including infrastructure. PC2 would better advance the achievement of that objective.

The submitter seeks no changes to PC2, and that Policy 3.4.2(i), 8.3.4r, 18.4.13 22.4.12, and 27.4.13 be retained.

Submission Points 1.1, 1., 1.3, 1.4, and 1.5 are recommended to be accepted in part for the reasons set out in the submission and the section 32 report, except where they are modified by the relief recommended to be granted to other submitters.

Recommendations

That Submission 1.1 from the Ministry of Education be accepted insofar as the amendments proposed to Policy 3.4.2 (Change A1) are retained as notified.

That Submission 1.2 from the Ministry of Education be accepted insofar as the amendments proposed to Criteria 8.3.4r (Change C2) are retained as notified.

⁸ s.13 Ngāti Tuwhāretoa, Raukawa and Te Arawa River Iwi Waikato River Act 2010

That Submission 1.3 from the Ministry of Education be accepted in part insofar as the amendments proposed to add new performance standard 18.4.13 (Change D1) is retained except where modified by recommended relief for FENZ.

That Submission 1.4 from the Ministry of Education be accepted in part insofar as the amendments proposed to add new performance standard 22.4.12 (Change D2) is retained except where modified by recommended relief for FENZ.

That Submission 1.5 from the Ministry of Education be accepted in part insofar as the amendments proposed to add new performance standard 27.4.13 (Change D3) is retained except where modified by recommended relief for other submitters.

SUBMISSION 2 – FIRE AND EMERGENCY NEW ZEALAND (FENZ)

Background

FENZ is a unified fire organisation that brings together New Zealand's urban and rural fire.

As outlined in S.10 of the Fire and Emergency Act 2017 (FaE Act), the principal objectives of Fire and Emergency are to;

- Reduce the incidence of unwanted fire and the associated risk to life and property,
- Protect and preserve life, and prevent or limit injury, damage to property land, and the environment.

The main functions of FENZ, as identified in S.11 of the FaE Act, are to:

- Promote fire safety, including providing guidance on the safe use of fire as a land management tool;
- Provide fire prevention, response, and suppression services;

Assessment

FENZ seeks amendments to PC2 in **Submission Points 2.1, 2.2, and 2.3** to exclude water taken from Council's reticulated water network for the purpose of emergencies or training and refers to both section 48 Fire and Emergency Act and section 14(3)(e) of the RMA. Adopting these points would mean that standards 18.4.13, 22.4.12, and 27.4.13 would read (additions underlined):

No activity, or combination of activities on a site shall have either:

- a. *A requirement for water from Council's reticulated supply exceeding 10m³ per connection per day (this does not include water required to be taken or used for emergency or training purposes in accordance with section 48 of the Fire and Emergency New Zealand Act 2017 (RMA s14(3)(e));...*
- b. *A requirement to discharge wastewater to a public sewer exceeding 10m³ per connection per day.*

The report writer generally agrees with the submissions of FENZ and the associated reasons as they relate to PC2 as set out in the submission. In particular:

- a) The health and safety of communities are relevant matters under Part 2 of the RMA insofar as they relate to the functions of FENZ;

- b) In order to be certain that the provisions of PC2 assist in achieving their principle objective the matters in PC2 can be improved;
- c) Emergencies and training/exercises can be appropriately provided for within the provisions of PC2 without the significant adverse effects PC2 is seeking to avoid.

The report writer has enquired with Council's Development Engineer, Mr Andrew Pascoe, regarding the relief sought. He is of the view that the provision of occasional water for emergencies is unlikely to compromise the performance of Council's network.

However, where the report writer disagrees is the reference to s14(3)(e) of the RMA. Section 14 of the RMA relates to the taking, use, damming of water (amongst other things). This is not a matter the ODP needs to turn its mind to as:

1. Section 30(e) of the RMA allocates the control of taking, use, damming and diversion of water to Regional Authorities; and,
2. The definition of water in the RMA excludes water "...in any form while in any pipe, tank or cistern."

As PC2 relates to water already consented for municipal use and within pipe, the provision does not apply.

Recommendations

That Submission 2.1 from Fire and Emergency New Zealand be accepted in part insofar as the relief sought in performance standard 18.4.13 by not referring to section 14(3)(e), but amending 18.4.13 (Change D1) to read:

18.4.13 Water and Wastewater

No activity, or combination of activities on a site shall have either:

- a) A requirement for water from Council's reticulated supply exceeding 10m³ per connection per day **(this does not include water required to be taken or used for emergency or training purposes in accordance with section 48 of the Fire and Emergency New Zealand Act 2017);**
- b) A requirement to discharge wastewater to a public sewer exceeding 10m³ per connection per day.

That Submission 2.2 from Fire and Emergency New Zealand be accepted in part insofar as the relief sought in performance standard 22.3.12 by not referring to section 14(3)(e), but amending 22.4.12 (Change D2) to read:

22.4.12 Water and Wastewater

No activity, or combination of activities on a site shall have either:

- c) A requirement for water from Council's reticulated supply exceeding 10m³ per connection per day **(this does not include water required to be taken or used for emergency or training purposes in accordance with section 48 of the Fire and Emergency New Zealand Act 2017);**
- d) A requirement to discharge wastewater to a public sewer exceeding 10m³ per connection per day.

That Submission 2.3 from Fire and Emergency New Zealand be accepted in part insofar as the relief sought in performance standard 27.4.13 by not referring to section 14(3)(e), but amending 27.4.13 (Change D3) to read:

27.4.13 Water and Wastewater

No activity, or combination of activities on a site shall have either:

e) A requirement for water from Council's reticulated supply exceeding 10m³ per connection per day (**this does not include water required to be taken or used for emergency or training purposes in accordance with section 48 of the Fire and Emergency New Zealand Act 2017**);

f) A requirement to discharge wastewater to a public sewer exceeding 10m³ per connection per day.

SUBMISSION 3 – DPS DEVELOPMENTS LIMITED

Background

DPS Developments Limited (DPS) is currently seeking subdivision consent for a property located in the Kennedy Drive Growth Cell identified as Growth Cell 3 in PC1 and has significant land holdings in the Putāruru Business Zone.

Assessment

The submitter seeks the retention of a number of amendments sought by PC2, including, Policy 3.4.2i, the definition of Levels of Service and the Assessment criteria 8.3.4(n), (r) and 8.4.1(za).

Submission Points 3.1, 3.2, 3.3, 3.4, and 3.5 seek to retain those parts of PC2 as notified (submissions are recommended to be accepted in part for the reasons set out in the section 32 report, except where they are modified by the relief recommended to be granted to other submitters).

However, **Submission Points 3.6, 3.7 and 3.8**, oppose performance standards 18.4.13, 22.4.12, and 27.4.13. The submission states the proposed performance standard:

- a) Limits the amount of connections for an activity;
- b) Does not take into account the scale of an individual activity; and,
- c) Lacks appropriate modelling/information to support the introduction of the provisions.

The submitter suggests that one large activity that may cross individual Records of Title would be limited to one connection, and that individual activities on a number of smaller lots would generate more adverse effects, cumulatively, on Council's reticulated systems. The performance standards limiting takes of water and discharges, are based on a 'per connection' basis which does not limit the amount of connections available for an activity. I therefore recommend that this point be rejected.

I agree in part with the submission in that it would be 'possible' to have many small sites that take and/or discharge up to the 10m³ performance standard for water and wastewater respectively. However, as noted in the evidence of Mr McGregor, in terms of metred water takes from Council's network, only 2% (9 users) currently exceed the standard.⁹ I therefore consider it unlikely.

⁹ Para 6.6 - Evidence in Chief – Campbell James McGregor, Water Supply and Wastewater

Furthermore, if larger activities were given more scope to take more as opposed to smaller activities it would undermine the purpose of PC2, to manage the effects of larger demand activities on Council's reticulated water and wastewater networks. Regardless, the amended assessment criteria do not preclude large amounts of water being used by larger activities but does require assessment against the consented and operational capacity, and level of service requirements for the relevant service and parts thereof. I therefore recommend that this point be rejected.

In terms of the concerns in **Submissions 3.6, 3.7, and 3.8** above regarding the lack of information and/or modelling to underpin the 10m³ municipal water take/reticulated wastewater discharge performance standard, I agree with the substance of the evidence of Mr McGregor, that there is sufficient information to identify that there are significant threats to Council's ability to:

- a. Maintain appropriate levels of service for existing users;
- b. Provide an appropriate level of service for land identified for development but yet to be developed and/or redeveloped (including infill);
- c. Meet its regional consent condition obligations for water takes and wastewater discharges;
- d. Identify a number of constraints on expanding network capacity, including existing over allocations of water and the cost of additional capacity in wastewater treatment plants and the reticulated networks for water and wastewater.

Further, in my capacity as a senior planner at South Waikato District Council, I can confirm that I have, on several occasions since October 2017, had discussions with parties seeking to introduce activities with the potential to have the type of effects that PC2 is seeking to avoid or mitigate. Without divulging matters that are commercially sensitive, these are generally processing activities. I am of the opinion that there is still strong interest to undertake these proposals. If not managed, all of Council's consented capacity to take and use water and to discharge in any of the four urban areas could be consumed by one development. This does not result in the efficient and effective use of land zoned and intended for development.

For completeness, I note provision 22.4.12 of the Putāruru Business Zone relating specifically to Growth Cell 4 of that zone in the proposed provisions for PC1 also before the Panel provides as follows:

Activities within Putaruru Growth Cell 4 shown on the Planning Maps, shall not result in:

- a) *An increase in wastewater discharged to Council's reticulated network that would cause the total amount of wastewater discharged from the Growth Cell to exceed 108 cubic metres per day. or*
- b) *An increase in demand on Council's reticulated water supply network that would cause the water supply demand from the Growth Cell to exceed 120 cubic metres per day.*

The provisions reflect both the acceptable cost and practicability of servicing the expanded zone, along with available capacity. The Section 32 Report for PC1 details that intensive modelling occurred as part of the development of that plan change.¹⁰ This has allowed analysis of both bulk servicing capacity and network capability to contribute to a cost benefit analysis of the merits of various scenarios for growth, the associated upgrades necessary to provide for that growth, and to identify a funding pathway to support both level of service and growth upgrades.

¹⁰ Page 11, 37, and 92, - Section 32 Report – Proposed Change No.1 to the South Waikato District Plan (Putāruru Growth and Related Matters)

The proposed performance standards in PC2 are intended to work in conjunction with 22.4.12 in PC1 above so that one proposal does not unduly take up all the available capacity. However, if one development utilises the entire site, then it would be reasonable to consider the full utilisation of that capacity would be appropriate.

This is distinct from PC2, which applies to the Putāruru Business, Tokoroa Business, and Industrial Zones in their entirety. PC2 also seeks to ensure activities with large demands for water and/or wastewater capacity do not singularly, or in conjunction with other activities, reduce the levels of service available to land zoned for development, and/or result in Council being in non-compliance with its relevant consents that provide that infrastructure.

Modelling is proposed in the Annual Plan for both the Tokoroa and Tīrau townships over the 20/21 financial year. This may inform future growth planning or infrastructure constraints. However, this does not mitigate the immediate and significant risk of the establishment of activities that may affect levels of service or network/treatment capacity. I therefore recommend that this point be rejected.

Recommendations

That submission 3.1 from DPS Investments Limited be accepted insofar as the amendments proposed to Policy 3.4.2 (Change A1) are retained as notified.

That submission 3.2 from DPS Investments Limited be accepted insofar as the proposed new definition of Level of Service (Change B1) is retained as notified.

That submission 3.3 from DPS Investments Limited be accepted insofar as the amendments proposed to Criteria 8.3.4(n) (Change C1) are retained as notified.

That submission 3.4 from DPS Investments Limited be accepted insofar as the amendments proposed to Criteria 8.3.4(r) (Change C2) are retained as notified.

That submission 3.5 from DPS Investments (Change C3) Limited be accepted insofar as the amendments proposed to Criteria 8.3.1(za) are retained as notified.

That submission 3.7 from DPS Investments Limited be rejected insofar as the amendments proposed to Criteria 18.4.13 (Change D1) are retained as notified, except where modified by recommended relief for FENZ.

That submission 3.6 from DPS Investments Limited be rejected insofar as the amendments proposed to Criteria 22.4.12 (Change D2) are retained as notified, except where modified by recommended relief for FENZ.

That submission 3.6 from DPS Investments Limited be rejected insofar as the amendments proposed to Criteria 27.4.13 (Change D3) are retained as notified, except where modified by recommended relief for FENZ.

SUBMISSION 4 – RAUKAWA CHARITABLE TRUST

Background

As noted in their submission, the RCT is the Iwi Authority that has delegated authority from the Raukawa Settlement Trust to represent Raukawa. The South Waikato District Council enjoys a Joint Management Agreement (JMA) with Raukawa (and the Te Arawa River Iwi Trust - TARIT), to, in part, give effect of the requirements of the Ngāti Tuwhāretoa, Raukawa, and Te Arawa River Iwi Waikato

River Act 2010. RCT is also responsible for the administration of Te Rautaki Taiao A Raukawa – the Raukawa Environmental Management Plan 2015 (REMP).

Assessment

The submission of RCT seeks a number of proposed changes be retained. The submission points that seek to retain those parts of PC2 as notified, **Submission Points 4.1, 4.2, 4.3, 4.4, 4.5, 4.8, and 4.11**, are recommended to be accepted in part for the reasons set out in the section 32 report, except where they are modified by the relief recommended to be granted to other submitters.

Submission Points 4.6, 4.9 and 4.12 all similarly seek that PC2 is amended so that 8.2 of the ODP is amended to the extent that provides for both limited notification of iwi and hapu, and public notification. The approach that Section 8.2 of the ODP takes generally precludes the public notification and limited notification of Restricted Discretionary Activities with some specified exceptions. The ODP also generally requires that non-compliance with a performance standard, which 18.4.13, 22.4.12, and 27.4.13 are, shall be considered as Restricted Discretionary Activities. As a result, for non-compliance with the provisions of PC2 as proposed, except where 'special circumstances' apply in s95A(9) and 95B(10) of the RMA, both public notification and limited notification is precluded.

Public notification

The potential scale and impact of effects that PC2 seeks to manage, namely the potential for the failure of public reticulated infrastructure to meet the required level of service and conditions of consents, and the consequential health, safety, cultural and economic effects are more than significant, and, at their most significant, critical. Those effects may also be expansive in terms of whom they may affect, for example, entire urban communities. As such, the report writer is of the view that public notification should not be precluded. However, this should be balanced against the certainty required for development within zoned land that may have minor scale of non-compliance. Where those effects are within Council's regional consents, and also where levels of service are maintained, it is not necessary, nor appropriate, for notification to be mandatory.

Limited notification

In assessing the relief sought regarding the removal of the preclusion of limited notification for Iwi and Hapu, I refer to the requirement in section 6(e) of the RMA to *recognise and provide for "...the relationship of Māori and their culture and tradition with their ancestral lands, water, sites, waahi tapu, and other taonga"*. There is a clear relationship with the matters in 6(e), including water and waahi tapu and the potential effects of activities that decrease the level of service for reticulated water and wastewater systems and waste water treatment plants where Council becomes non-compliant with the consented takes and/or discharges. Similarly, section 7(a) in relation to having *particular regard* to kaitiakitanga, and the requirement to *take into account the principles of the Treaty of Waitangi* there is a clear requirement to provide iwi and hapu with an opportunity to exercise kaitiakitanga over their ancestral resources.

Objective 3.9 of the RPS, outlined above, also requires the relationship of tangata whenua with the environment be recognised and provided for, including their role as kaitiaki. Method 4.2.3 of the RPS, relating to collaborative approaches, also directs Council to ensure 'appropriate processes and opportunities are established and maintained to inform, amongst other parties, tangata whenua, of matters, including consent processes which may have an effect on their interests. Also, Method 4.3.3 requires Council to develop an understanding of the application of kaitiakitanga and finding ways to practically express it. This is further underpinned by Policy 4.3 of the RPS and the development principles set out in 6A.

While Te Ture Whaimana – The Vision and Strategy for the Waikato River must be read in its entirety, a number of parts have direct relevance to PC2 and these submission points. I note Issue 1 which acknowledges that the Awa is degraded, and this degradation has compromised the ability of Waikato River Iwi to exercise mana whakahaere or conduct their tikanga and kawa. Further, Objective c seeks the restoration and protection of the relationship of Waikato River iwi according to their tikanga and kawa, with the Waikato River. Enabling iwi and hapu to be limited notified for the matters within the scope of PC2 is an appropriate method to partially achieve those aspects of Te Ture Whaimana.

In referring back to the ODP, Issue 1 recognises the degradation of the health and well-being of the Waikato Awa, and Issue 2 acknowledges that the values of tangata whenua needs to be better reflected in decision making on resource management matters. The ODP also sets out a range of objectives addressing the health and wellbeing of the Waikato River, papatuanuku/integrated holistic management/cumulative effects, cultural heritage, kaitiakitanga, Treaty of Waitangi, and the effects of urban activities on Waikato river. This is underpinned by Policies 3.4.1, recognise and provide for decision making, and 3.4.5 co-management processes for early engagement. The provisions of PC2 would better provide for the achievement of those matters by enabling the engagement of Iwi and Hapu in removing the preclusion for limited notification.

The REMP specifically addresses water and infrastructure issues. The Objectives in the Water/Wai and infrastructure sections are relevant to PC2, in particular:

The Raukawa kaitiaki relationship with our waters is respected, enhanced, and supported.

Providers of infrastructure networks, developments, and operations within the Raukawa Takiwa understand Raukawa values and interests.

The Raukawa cultural landscape and Raukawa cultural values and associations are protected and provided for in infrastructure planning and developments.

Resilient and efficient infrastructure networks and renewable technologies are promoted within the Raukawa takiwa.

Concerns outlined in the Water/Wai section REMP include:

- Current infrastructure and wastewater practices allow for the discharge of human waste directly to water.
- Aging and inefficient community urban wastewater systems and reticulation systems have created legacy issues as Raukawa seeks to restore and protect the rivers to meet higher environmental standards.
- Ineffective policy regimes lacking recognition of Raukawa values, traditional relationships, customary rights and interests.
- Intensifying agriculture, change of land use, and urban growth and consequent increase in point and non-point source discharges (i.e. nitrogen, phosphate, bacteria) and sediment to water bodies.
- The increasing demand for use of both surface and ground water.
- Historical water allocation regimes that have resulted in full allocation or near full allocation of water bodies within the takiwa.

This is similarly reflected in concerns regarding infrastructure as follows:

- Lack of understanding and undervaluing of the Raukawa world view within existing legislative, policy, and regulatory frameworks.

The policy frameworks above demonstrate that there is a clear necessity to facilitate the contemporary application of kaitiakitanga.

I note the requirements of the Ngāti Tuwhāretoa, Raukawa, and Te Arawa River Iwi Waikato River Act 2010. Amongst other things, there is a duty to enter into a Joint Management Agreement (JMA).¹¹ This has been achieved between Council and both Raukawa and the Te Arawa River Iwi Trust (TARIT). Both documents reflect the same rights and obligations.

The JMA's, amongst other things, establishes:

- A governance committee made up of equal numbers of members of Council (elected members) and the relevant trust in order to oversee the JMA, and;
- A Joint working party made up of senior managers of Council (staff) and senior managers of the relevant trust and determines processes and procedures for RMA functions, powers and duties.

Section 7 of the JMA's outline those processes and procedures as they relate to Council initiated planning documents. For Council initiated plan changes, including PC2, the JWP is required to meet and make two recommendations to the governance committee. This includes the commencement of an amendment to an RMA document (plan changes), and to approve the content of a proposed plan change for notification. The final decision on those two recommendations sit with the governance committee. These processes must be followed prior to commencement and notification, respectively. This process was followed by PC2 as noted in the section 32 Report.¹² Without limiting status as affected parties, the processes set out in the JMA enable, at least in part, iwi that are parties to the JMA to exercise mana whakahaere through co-management for the matters that Council has responsibility for.

In terms of dealing with matters directly related to section 14 of the RMA (in particular the taking and use of water) and section 15 of the RMA (discharges of contaminants), WRC is the administrative authority. I note, as set out in the evidence of Mr McGregor, Council is currently undertaking consent processes with the Waikato Regional Council for its four wastewater treatment plants.¹³ The principles set out in the JMA's underpinned the extensive consultation and engagement with both JMA and non-JMA parties in the design and pre-application phase. A result of that engagement was a significantly improved level of treatment by Council's wastewater treatment plants, including additional cultural mitigations, which was ultimately supported by written approval from RCT.

Consents for takes of water are not yet due, but it is anticipated that Council would engage in a similar manner.

The report writer therefore views any consents granted through that process, their level of treatment provided, and associated environmental effects are on some level supported by RCT and the REMP. Council should therefore be able to rely on those consents, and associated conditions as constituting a reasonable level of performance that provides for current, new or more intensive development on land zoned for that purpose, even if that development has some level of non-compliance with the proposed performance standards. As such, the report writer does not recommend that limited notification to iwi and hapu is mandatory for non-compliance with the new performance standards proposed by PC2.

Conversely, new or expanded activities that would result in non-compliance with those consents could be viewed as not supporting the contemporary exercise of kaitiakitanga. and undermine the exercise

¹¹ s.43 Ngāti Tuwhāretoa, Raukawa and Te Arawa River Iwi Waikato River Act 2010.

¹² Page 13 – 14 – Section 32 Report – South Waikato District Plan – Plan Change 2 – (Infrastructure Management)

¹³ Para 4.5-4.6 - Evidence in Chief – Campbell James McGregor, Water Supply and Wastewater

of mana whakahaere. I therefore recommend that amendments be made to section 8.2 of the ODP so iwi and hapu are not precluded from limited notification for applications that do not comply with the new performance standards proposed by PC2.

I recommend amending 8.2 of the ODP as follows:

8.2 Notification Considerations

- a) *The Council is precluded from giving public notification of any application for a resource consent for a controlled activity or a restricted discretionary activity, except where Rule 8.2g) applies, and for applications for resource consent for non-compliance with Rules 18.4.13, 22.4.12, and 27.4.13.*
- b) *The Council is precluded from giving limited notification of any application for resource consent, except where Rules 8.2c) to 8.2fa) apply, where: ...*
- ... *fa) For non-compliance with Rules 18.4.3, 22.4.12, and 27.4.13, limited notification to Iwi and Hapu is not precluded.*

Submission Points 4.7, 4.10, 4.13 each seek the inclusion of specific assessment criteria related to the adverse effects on iwi and hapu resulting from the non-compliance with performance standards 18.4.13, 22.4.12 and 27.4.13. As noted above, there is a clear relationship between iwi/hapu and the values in water and also the effects of poorly managed infrastructure on water. In examining the existing and amended assessment criteria as part of PC2, there is insufficient scope available to consider those effects, noting my assessment regarding limited notification above and Council's ability to rely on its relevant resource consents, particularly in that they at least partially address key issues for Raukawa. It is therefore reasonable and necessary to introduce additional criteria to assess effects on Iwi and Hapu.

Any proposed new assessment criteria would need to more appropriately recognise that, at a significant scale of effects, some proposals may result in reduced or poor performing infrastructure. This will relate to the sources of water for takes and the waterbodies that ultimately receive treated human waste. The provision acknowledges the significance to the Districts waterbodies to Iwi/hapu and provides the basis for an assessment that provides for their limited notification.

I recommend amending 8.3.3 of the ODP as follows:

8.3.3 Matters where Discretion is Restricted – Restricted Discretionary Activities

- XX In assessing the effects of non-compliance with rules 18.4.13, 22.4.12 and 27.4.13, and in addition to criteria 8.3.4n) and 8.3.4r), Council restricts its discretion to the degree of non-compliance and the extent to which that non-compliance results in adverse effects on waterbodies, including cultural effects.*

Submission point 4.14 seeks that the plan change provisions be amended to consider the values, interests and concerns of nga marae and nga whanau, including the broader water take and discharges in the Raukawa takiwa, and their pressure on Council infrastructure and the water resource and the limits proposed (10m³ takes of reticulated water and discharges into the reticulated wastewater network).

This submission point can only be considered within the scope of PC2 and Council's functions under section 31 of the RMA. The scope of PC2 is restricted to the management of Council's reticulated water and wastewater networks insofar as they retain the required level of service and maintain

compliance with the terms and conditions of resource consents granted by the Waikato Regional Council for that purpose and adequately provide for identified activities within their zones.

The substantive responsibilities and policy frameworks that manage water lay with Regional Councils. As noted when assessing the submission of FENZ, section 14 of the RMA relates to the taking, use, damming of water (amongst other things) and section 15 relates to the management of discharges, and neither responsibility is contained in the ODP as:

1. Section 30(e) of the RMA allocates the control of taking, use, damming and diversion of water to Regional Authorities as well as discharges in 30(f); and,
2. The definition of water in the RMA excludes water "...in any form while in any pipe, tank or cistern."

However, Council does have a function to achieve integrated management of the effects of the use, development and protection of land and associated natural and physical resource of the district.¹⁴ Within the scope of PC2, and functions under the RMA, and the requirements set out in Part 2 of the RMA, there are policy approaches that can advance the submission generally. In particular, through enabling engagement with consent processes associated with the purpose of PC2, and also providing for integration of Maori values in the assessment of proposals. This can be addressed through the assessment of **Submission Points 4.6, 4.7, 4.9, 4.10, 4.12, and 4.13**. I therefore recommend that Submission Point 4.14 be granted in part insofar as the relief sought for those points are met.

Submission Points 4.15, 4.16 request additional zones/areas serviced by reticulated water and/or wastewater infrastructure also include a performance standard to the same extent as that provided for 17.4.13, 22.4.12, and 27.4.13. A review of the permitted activity standards for the remaining zones, including the rural, rural residential, residential and town centre zones that are partially or fully reticulated, found that the types of activity likely to result in the effects that PC2 is seeking to manage (high demand water users such as industrial activities) was not provided for. Therefore, no changes to PC 2 are recommended.

Recommendations

That submission 4.1 from the Raukawa Charitable Trust be accepted insofar as the amendments proposed to Policy 3.4.2(i) (Change A1) are retained as notified.

That submission 4.2 from the Raukawa Charitable Trust be accepted insofar as the proposed amendments to 8.3.4(n) (Change C1) are retained as notified.

That submission 4.3 from the Raukawa Charitable Trust be accepted insofar as the amendments proposed to Criteria 8.3.4(r) (Change C2) are retained as notified.

That submission 4.4 from the Raukawa Charitable Trust be accepted insofar as the amendments proposed to Criteria 8.3.2(za) (Change C3) are retained as notified.

That submission 4.5 from the Raukawa Charitable Trust be accepted insofar as the amendments proposed to 18.4.13 (D1) are retained as notified, except where modified by recommended relief for FENZ.

That submission 4.6 from the Raukawa Charitable Trust be accepted insofar as public notification and limited notification to iwi and hapu is provided for by amending 8.2 to read:

8.2 Notification Considerations

¹⁴ S.31(a) Resource Management Act 1991

- a) *The Council is precluded from giving public notification of any application for a resource consent for a controlled activity or a restricted discretionary activity, except where Rule 8.2g) applies, and for applications for resource consent for non-compliance with Rules 18.4.13, 22.4.12, and 27.4.13.*
- b) *The Council is precluded from giving limited notification of any application for resource consent, except where Rules 8.2c) to 8.2fa) apply, where: ...*
- ... *fa) For non-compliance with Rules 18.4.3, 22.4.12, and 27.4.13, limited notification to Iwi and Hapu is not precluded.*

That submission 4.7 from the Raukawa Charitable Trust be accepted insofar as an additional assessment criteria is included in 8.3.3 as follows:

8.3.3 Matters where Discretion is Restricted – Restricted Discretionary Activities

XX *In assessing the effects of non-compliance with rules 18.4.13, 22.4.12 and 27.4.13, and in addition to criteria 8.3.4n) and 8.3.4r), Council restricts its discretion to the degree of non-compliance and the extent to which that non-compliance results in adverse effects on waterbodies, including cultural effects.*

That submission 4.8 from the Raukawa Charitable Trust be accepted insofar as the proposed amendments to 22.3.12 (Change D2) are retained as notified except where modified by recommended relief for FENZ.

That submission 4.9 from the Raukawa Charitable Trust be accepted insofar as public notification and limited notification to iwi and hapu is provided for by amending 8.2 to read:

8.2 Notification Considerations

- a) *The Council is precluded from giving public notification of any application for a resource consent for a controlled activity or a restricted discretionary activity, except where Rule 8.2g) applies, and for applications for resource consent for non-compliance with Rules 18.4.13, 22.4.12, and 27.4.13.*
- b) *The Council is precluded from giving limited notification of any application for resource consent, except where Rules 8.2c) to 8.2fa) apply, where: ...*
- ... *fa) For non-compliance with Rules 18.4.3, 22.4.12, and 27.4.13, limited notification to Iwi and Hapu is not precluded.*

That submission 4.10 from the Raukawa Charitable Trust be accepted insofar as an additional assessment criteria is included in 8.3.3 as follows:

8.3.3 Matters where Discretion is Restricted – Restricted Discretionary Activities

XX *In assessing the effects of non-compliance with rules 18.4.13, 22.4.12 and 27.4.13, and in addition to criteria 8.3.4n) and 8.3.4r), Council restricts its discretion to the degree of non-compliance and the extent to which that non-compliance results in adverse effects on waterbodies, including cultural effects.*

That submission 4.11 from the Raukawa Charitable Trust be accepted insofar as the proposed amendments to 27.3.13 (Change D3) are retained as notified except where modified by recommended relief for FENZ.

That submission 4.12 from the Raukawa Charitable Trust be accepted insofar as public notification and limited notification to iwi and hapu is provided for by amending 8.2 to read:

8.2 Notification Considerations

- a) *The Council is precluded from giving public notification of any application for a resource consent for a controlled activity or a restricted discretionary activity, except where Rule 8.2g) applies, and for applications for resource consent for non-compliance with Rules 18.4.13, 22.4.12, and 27.4.13.*
- b) *The Council is precluded from giving limited notification of any application for resource consent, except where Rules 8.2c) to 8.2fa) apply, where: ...*
- ... *fa) For non-compliance with Rules 18.4.3, 22.4.12, and 27.4.13, limited notification to Iwi and Hapu is not precluded.*

That submission 4.13 from the Raukawa Charitable Trust be accepted insofar as an additional assessment criteria is included in 8.3.3 as follows:

8.3.3 Matters where Discretion is Restricted – Restricted Discretionary Activities

- XX In assessing the effects of non-compliance with rules 18.4.13, 22.4.12 and 27.4.13, and in addition to criteria 8.3.4n) and 8.3.4r), Council restricts its discretion to the degree of non-compliance and the extent to which that non-compliance results in adverse effects on waterbodies, including cultural effects.*

That submission 4.14 from the Raukawa Charitable Trust be accepted in part insofar as the proposed relief recommended provides for the consideration of the values, interests of nga marae, and nga whanau within the scope of PC2.

That submission 4.15 be accepted in part and rejected in part in that the performance standard has been considered for other zones, but no amendment or inclusions are recommended.

That submission 4.16 be accepted in part and rejected in part in that the performance standard has been considered for other areas services by wastewater and water supply, but no amendment or inclusions are recommended.

SUBMISSION 5 – MICHAEL JONES

Background

Michael Jones made **Submission Point 5.1** in support of 'Option 3' on page 22 of the Section 32 Report as notified. This option, policy amendment and performance standard, was the option that was ultimately included in PC2.

Assessment

As the submission supports the option chosen for PC2, the submission is appropriate for the reasons set out in the Section 32 Report.

Recommendations

That Submission 5.1 from the Michael Jones be accepted in part insofar as the option developed into PC2 is retained, but the text of PC2 is amended by relief sought by other submitters.

Associated Documents

Proposed South Waikato District Plan November 2012.

Section 32 Report November 2012 Accompanying Proposed South Waikato District Plan.

Summary of submissions by submitter and by further submitter.

Attachments

ATTACHMENT 1 – Evidence of Mr Campbell McGregor – Infrastructure Engineering

ATTACHMENT 2 - PC2 - Recommended Tracked Change version

**ATTACHMENT 1 – EVIDENCE OF MR CAMPBELL
MCGREGOR – WATER SUPPLY AND WASTEWATER**

ATTACHMENT 2 - RECOMMENDED CHANGES AS A RESULT OF SUBMISSIONS – PC2 – INFRASTRUCTURE MANAGEMENT

Provisions to be deleted by PC2 shown as ~~strikethrough~~

Text to be added by PC2 shown as underlined

Text proposed to be added or deleted by submitter and recommended to be accepted is shown in red and underlined or deleted in ~~red and strikethrough~~

Text proposed by submitter but not recommended to be accepted is shown as ~~green and strikethrough~~

Consequential amendments for text to be added or deleted recommended by staff are shown as blue and underlined or strikethrough

(Chapter 3 – Objectives and Policies for Managing the District’s Tangata Whenua Values)

3.4.2 *To achieve the objectives of the Waikato River Vision and Strategy within the catchment area identified on the planning maps by plan provisions relating to:*

- a) building setbacks adjacent to waterways*
- b) managing the effects of large scale land use change*
- c) earthworks and silt control*
- d) activities on the surface of water*
- e) esplanade reserves/strips*
- f) landscape protection*
- g) preservation of natural character*
- h) bonus lot provisions for Significant Natural Areas and in some cases riparian areas*
- i) managing the demand for the supply and discharge of water to keep within consented limits.*

(Chapter 8 – Administration of the Plan)

8.2 Notification Considerations

- a) *The Council is precluded from giving public notification of any application for a resource consent for a controlled activity or a restricted discretionary activity, except where Rule 8.2g) applies, and for applications for resource consent for non-compliance with Rules 18.4.13, 22.4.12, and 27.4.13.¹⁵*

ADVISORY NOTE: - Under Section 95A(2) of the Act, applications for discretionary and non-complying activities need not be notified if Council is satisfied that the adverse effects of the activity on the environment will be minor.

- b) *The Council is precluded from giving limited notification of any application for resource consent, except where Rules 8.2c) to 8.2fa¹⁶) apply, where:*

¹⁵ Submissions 4.6, 4.9, and 4.12 – Raukawa Charitable Trust

- i) *The application is for a controlled activity land use or subdivision consent, or*
- ii) *The application is for a restricted discretionary activity subdivision consent, except where the subdivision has become restricted discretionary due to its proximity to high voltage transmission lines, or sub-transmission lines, in which case the electrical line owner and/or operator will be the affected parties, or*
- iii) *The application is for a restricted discretionary activity land use consent except where the activity involves building setbacks from, or earthworks near, electricity transmission lines in which case the electrical line owner and/or operator will be the affected parties, or*
- iv) *The application is for a restricted discretionary activity land use consent which concerns non-compliance with any of the following rules:*

- *Outdoor living space*
- *Site Coverage*
- *Density of dwellings*
- *Verandah provision*
- *Natural hazards*
- *Scale of retail activity in Industrial zone*
- *Building setbacks from rivers (except the Waikato River), lakes or wetlands*
- *Earthworks or structures under Rules 14.3.1 or 14.3.2*
- *Clearance of indigenous vegetation, land disturbance or drainage under Rule 14.4.1*
- *Building materials and reflectivity under Rule 29.4.5.*

ADVISORY NOTE: - Under Section 95E(3) of the Act, Council must decide that a person is not an affected person if that person has given their written approval to the activity.

- c) *Transpower will be notified as an affected party and/or provided limited notification of resource consent applications, where these are likely to affect a National Grid Corridor as illustrated in the definitions section of this Plan.*
- d) *The NZ Transport Agency will be considered an affected party and/or provided limited notification of resource consent applications for:*
 - i) *Subdivision applications under Rule 10.3.1(b)(v).*
 - ii) *Land use applications seeking exemptions from the traffic generation limits and/or vehicle access requirements in the following Rules:*
 - Tokoroa Town Centre - Rule 17.4.10*
 - *Tokoroa Business - Rule 18.4.12*
 - *Tokoroa Residential - Rules 20.4.1b) to e)*
 - *Putāruru Town Centre- Rule 21.4.9*
 - *Putāruru Business- Rule 22.4.11*
 - *Putāruru Residential- Rules 23.4.1 b) to d)*
 - *Tīrau Town Centre- Rule 24.4.11*
 - *Tīrau Residential- Rules 25.4.1 b) to d)*

- *Industrial – Rule 27.4.12 a)*
 - *Rural - Rule 28.4.6 g)*
 - *Rural Residential – Rule 29.4.6 iii)*
- e) *Mighty River Power will be notified as an affected party for:*
- i) *Subdivision applications under Rule 10.3.1c)iv)*
 - ii) *Subdivision or land use applications seeking exemptions from:*
 - Building setbacks from the Waikato River or hydro electric power operating easements (Rules 28.4.2a) and 29.4.2a))*
 - Geotechnical assessments (Rules 10.6.7, 10.7.9, 28.3.3b) and 29.3.3b))*
 - Natural hazard flood levels for the Waikato River (Rules 10.7.4b), 28.4.12 and 29.4.11).*
- f) *The Raukawa Charitable Trust will be notified as an affected party and receive limited notification of resource consent applications for the conversion of commercial forestry land for farming under Rule 8.3.1g), in relation to the location of identified recorded and unrecorded:*
- *cultural landscapes and cultural sites; and*
 - *archaeological sites of Maori origin.*
- fa) [For non-compliance with Rules 18.4.3, 22.4.12, and 27.4.13, limited notification to Iwi and Hapu is not precluded.](#)¹⁷*
- g) *Despite the above, the Council must, under Section 95A of the Act, publicly notify any application if an applicant requests, and may publicly notify any application if it decides that special circumstances exist in relation to the application.*

8.3.2 Reservation of Control – Controlled Activity Subdivision Applications

- za) *Infrastructure provision and upgrading, operation and maintenance, including works to maintain the function, safety and operation and levels of service of the network utilities and infrastructure*

8.3.3 Matters where Discretion is Restricted – Restricted Discretionary Activities

[XX In assessing the effects of non-compliance with rules 18.4.13, 22.4.12 and 27.4.13, and in addition to criteria 8.3.4n\) and 8.3.4r\), Council restricts its discretion to the degree of non-compliance and the extent to which that non-compliance results in adverse effects on waterbodies, including cultural effects.](#)¹⁸

8.3.4 Additional Matters of Control and Restricted Discretion

- n) *Infrastructure provision and upgrading, operation and maintenance, including works to maintain the function, safety and ~~and~~ operation of ~~of~~ network utilities and infrastructure to maintain levels of service to zoned land and ensure Council's compliance with consent conditions relating to infrastructure facilities.*
- r) *Cumulative effects on infrastructure, including the extent to which levels of service to zoned land and Council's compliance with existing water take or wastewater discharge consents may be impacted.*

¹⁷ Submissions 4.6, 4.9, and 4.12 – Raukawa Charitable Trust

¹⁸ Submissions 4.6, 4.9, and 4.12 – Raukawa Charitable Trust

(Chapter 9 – Definitions)

Levels of service – means, for the purpose of Rules 8.3.4n, 8.3.4r and 8.4za, the specified level of quality and reliability as stated in South Waikato District Council's asset management plans.

(Chapter 18 – Tokoroa Business Zone)

18.4.13 Water and Wastewater

No activity, or combination of activities on a site shall have either:

- a. A requirement for water from Council's reticulated supply exceeding 10m³ per connection per day (this does not include water required to be taken or used for emergency or training purposes in accordance with section 48 of the Fire and Emergency New Zealand Act 2017 (RMA s14(3)(e));..¹⁹
- b. A requirement to discharge wastewater to a public sewer exceeding 10m³ per connection per day.

(Chapter 22 – Putāruru Business Zone)

22.4.12 Water and Wastewater

No activity, or combination of activities on a site shall have either:

- a. A requirement for water from Council's reticulated supply exceeding 10m³ per connection per day (this does not include water required to be taken or used for emergency or training purposes in accordance with section 48 of the Fire and Emergency New Zealand Act 2017 (RMA s14(3)(e));..²⁰
- b. A requirement to discharge wastewater to a public sewer exceeding 10m³ per connection per day.

(Chapter 27 – Industrial Zone)

27.4.13 Water and Wastewater

No activity, or combination of activities on a site shall have either:

- a. A requirement for water from Council's reticulated supply exceeding 10m³ per connection per day (this does not include water required to be taken or used for emergency or training purposes in accordance with section 48 of the Fire and Emergency New Zealand Act 2017 (RMA s14(3)(e));..²¹
- b. A requirement to discharge wastewater to a public sewer exceeding 10m³ per connection per day.

¹⁹ Submission 2.1 – Fire and Emergency New Zealand

²⁰ Submission 2.2 – Fire and Emergency New Zealand

²¹ Submission 2.3 – Fire and Emergency New Zealand