

**BEFORE THE ENVIRONMENT COURT
AT AUCKLAND**

ENV -

**I MUA I TE KOOTI TAIAO
I TĀMAKI MAKĀURAU ROHE**

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of an appeal under Clause 14 of the First
Schedule of the Act

BETWEEN **Iwi of Hauraki**

Appellant

AND **Waikato Regional Council**

Respondent

**NOTICE OF APPEAL
(7 JULY 2020)**



ATKINS | HOLM | MAJUREY

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NOTICE OF APPEAL OF IWI OF HAURAKI

1. Iwi of Hauraki appeals part of the decision of Plan Change 1 to the Waikato Regional Plan (**PC1**).
2. Iwi of Hauraki made a submission (23 May 2018) and further submission (17 September 2018) on PC1 and engaged in good faith consultation with Council given the initial failure to consult Iwi of Hauraki pursuant to Schedule 1 of the Resource Management Act 1990 (**Act**).
3. Iwi of Hauraki are not trade competitors for the purposes of section 308D of the Act.
4. Iwi of Hauraki received notice of the decision on 22 April 2020.
5. The decision was made by the Waikato Regional Council (**Council**).

APPEAL

6. Iwi of Hauraki is appealing parts of the decision that do not:
 - (a) Promote the sustainable management of natural and physical resources;
 - (b) Recognise and provide for the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, wahi tapu, and other taonga;
 - (c) Take into account the principles of the Treaty of Waitangi;
 - (d) Achieve consistency with Part 2 of the Act;
 - (e) Give effect to the National Policy Statement for Freshwater Management 2014.
7. The reasons for this appeal are:
 - (a) The catchments in the rohe of Iwi of Hauraki are of great spiritual, cultural, customary, ancestral and historical significance.
 - (b) Tāngata Whenua Ancestral Land within the Waikato River and Waipa River catchments was systematically alienated as a result of colonisation and breaches of the Treaty of Waitangi, and therefore not available to Mana Whenua.
 - (c) After inquiries into historical breaches of the Treaty of Waitangi and Crown Treaty settlement negotiations, Iwi of Hauraki are in the process of having ancestral lands returned to them.
 - (d) Treaty settlements are not to be prejudiced and devalued by any oppressive and inappropriate planning framework.
 - (e) As set out in 6(a)-(e) and Appendix A.

RELIEF SOUGHT

8. Iwi of Hauraki seeks amendments to PC1 that:

- (a) Address the matters raised in this appeal.
- (b) Are consequential and/or otherwise appropriate.

WAIVERS

- 9. In accordance with the Environment Court decision¹ on waivers sought by Council, this Notice of Appeal has been filed with the Court and served on Council electronically.
- 10. It is understood service will be affected by the Council, and there is no requirement to attach the Appellant's submission, Council decision or a list of parties to be served.

7 July 2020



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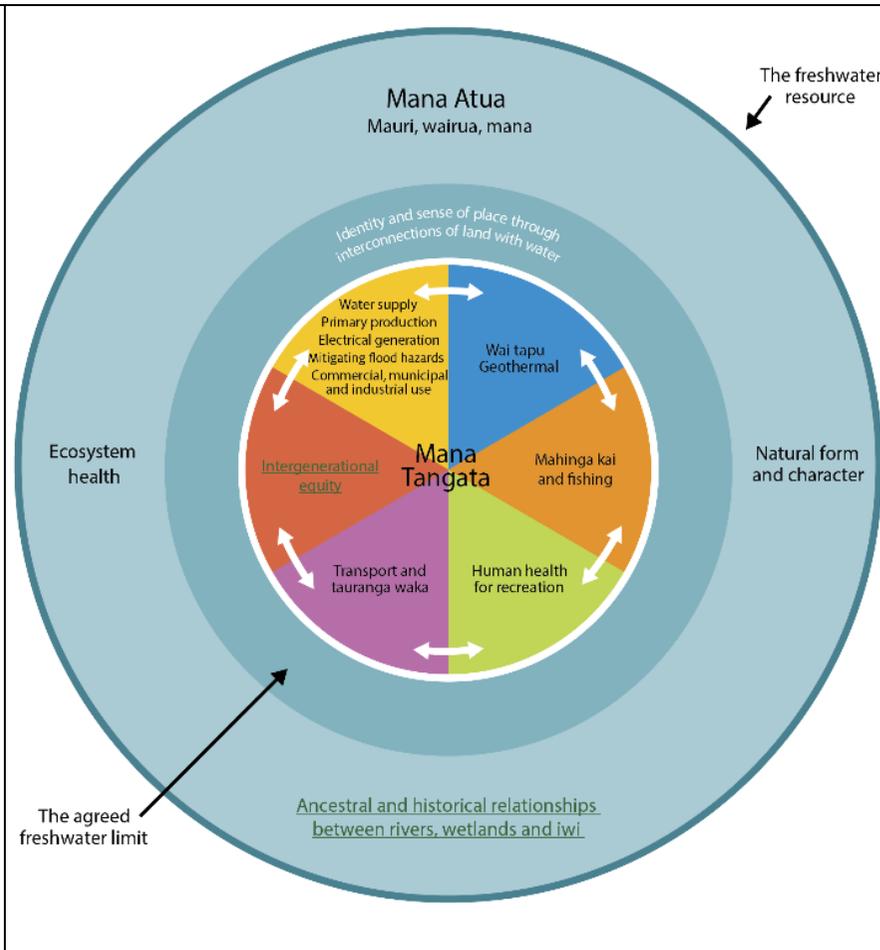
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¹ Re Wairakei Pastoral Limited [2020] NZEnvC 63.

APPENDIX A

PROVISION	PROPOSED AMENDMENTS (OR WORDS OF LIKE EFFECT)	REASONS
Background and explanation	<p>Insert text (English and translated Te Reo Maori version):</p> <p><u>Mana Whenua</u></p> <p><u>Mana whenua of the Waikato and Waipa river catchments have enduring customary interests and relationships with the watercourses and wetlands of the catchments. Ongoing Treaty Settlements provide measures that enable mana whenua to fulfil their intergenerational responsibilities as kaitiaki. The rohe of iwi do not always align with catchment boundaries, and it is expected that as further Treaty Settlements and co-management agreements develop, there will be a need to consider the consistency and relevance of water quality management within and across rohe. Also, refer to Section 2.2 of the Waikato Regional Plan. Section 2.2 provides a description of the iwi of the Waikato region and a summary of the key resource management issues affecting them within their respective rohe</u></p>	<p>Provides necessary and appropriate context.</p> <p>The definition is consistent with the s 2 RMA definition and is particularised to the context of the Waipa and Waikato Rivers.</p>
	<p>Insert text regarding Pare Hauraki worldview (English and translated Te Reo Maori version):</p> <p><u>Pare Hauraki</u></p> <p><u>Pare Hauraki have customary interests in the Waikato River catchment. These interests are recognised in Deeds of Settlement between the Crown and Hauraki iwi. This is a further step toward recognising mana whenua, rangatiratanga and kaitiakitanga across their rohe, in relation to all matters relating to the natural environment, and lays a foundation for promoting the</u></p>	<p>Provides necessary and appropriate context.</p>

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	<p><u>restoration, maintenance and enhancement of natural resources in the Pare Hauraki world.</u></p> <p><u>The catchments in the Pare Hauraki rohe are of great spiritual, cultural, customary, ancestral and historical significance to the iwi of Hauraki. The Crown and Hauraki Iwi have acknowledged that the involvement of the Hauraki Iwi in the governance and management of these waterways in these catchments be agreed as soon as possible between the Crown and Hauraki Iwi.</u></p>	
3.11.1 Values and uses for the Waikato and Waipa Rivers	<p>Reinsert the section entitled "3.11.1 Values and uses for the Waikato and Waipa Rivers" as originally notified with the below amendments:</p> <p>Te Mana o te Wai: Mana Atua, Mana Tangata - Additional wedge in diagram labelled:</p> <p><u>Intergenerational Equity - Use of tangata whenua ancestral lands.</u></p> <p>Additions to the outer circle of the terms "Ancestral and," "connections," "wetlands and springs" and "iwi" and deletion of the words "relationships" and "River iwi" to read:</p> <p><u>Ancestral and historical connections between rivers, wetlands, springs and iwi</u></p>	<p>The opening text to 3.11.1 states</p> <p>"Values can be thought of in terms of Mana Atua and Mana Tangata, which represent Te Mana o te Wai. Mana Atua represents the intrinsic values of water including the mauri (the principle of life force), wairua (the principle of spiritual dimension) and inherent mana (the principle of prestige, authority) of the water and its ecosystems in their natural state. Mana Tangata refers to values of water arising from its use by people for economic, social, spiritual and cultural purposes. Mana Atua and Mana Tangata values encompass past, present and future. [Emphasis added]</p> <p>It therefore follows that intergenerational equity and use of tāngata whenua ancestral lands are necessarily a component of Mana Tangata. These values should therefore</p>



be expressly included. This approach is consistent with ss 5, 6(e), 7(a) & 8 RMA.

In respect of Mana Atua, the reference to "other iwi" should be deleted. This drafting draws an improper distinction between "river iwi" and Iwi of Hauraki.

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<p>3.11.1 Values and uses for the Waikato and Waipa Rivers</p> <p>Hononga ki te wai, hononga ki te whenua</p>	<p>Delete "and other iwi":</p> <p>For River Iwi and other iwi, respect for the rivers, wetlands and springs lies at the heart of the spiritual and physical wellbeing of iwi and their tribal identity and culture. The river, wetlands and springs are is not separate from the people but part of the people, "Ko au te awa, ko te awa ko au" (I am the river and the river is me).</p>	<p>See above regarding "other iwi".</p>		
<p>3.11.1 Values and uses for the Waikato and Waipa Rivers</p> <p>Mana Atua – Intrinsic values Ancestry and History</p>	<p>Delete reference to "other iwi":</p> <p>Intrinsic values – Ancestry and History</p> <p>Ko ngā hononga tūpuna me ngā hononga o mua i waenga i ngā iwi o te awa me ētehi atu iwi me ngā awa, ngā repo me ngā puna / Ancestral and Historical connections between the rivers, wetlands, springs and River Iwi and other iwi</p> <p>Ko ngā korero tūpuna me ngā Kōrero o Muao / Ancestry and History</p> <table border="1" data-bbox="454 1129 1341 1394"> <tr> <td data-bbox="454 1129 736 1394"> <p>Each River Iwi and other iwi has their own unique and intergenerational relationship with the rivers, wetlands and springs.</p> </td> <td data-bbox="736 1129 1341 1394"> <ul style="list-style-type: none"> • The rivers, wetlands and springs have always been seen as taonga (treasures) to all River Iwi and other iwi. • The rivers, wetlands and springs have always given River Iwi and other iwi a strong sense of identity and connection with the land and water. • Rivers, wetlands and springs were used holistically; River Iwi and other iwi understood </td> </tr> </table>	<p>Each River Iwi and other iwi has their own unique and intergenerational relationship with the rivers, wetlands and springs.</p>	<ul style="list-style-type: none"> • The rivers, wetlands and springs have always been seen as taonga (treasures) to all River Iwi and other iwi. • The rivers, wetlands and springs have always given River Iwi and other iwi a strong sense of identity and connection with the land and water. • Rivers, wetlands and springs were used holistically; River Iwi and other iwi understood 	<p>See above regarding "other iwi".</p>
<p>Each River Iwi and other iwi has their own unique and intergenerational relationship with the rivers, wetlands and springs.</p>	<ul style="list-style-type: none"> • The rivers, wetlands and springs have always been seen as taonga (treasures) to all River Iwi and other iwi. • The rivers, wetlands and springs have always given River Iwi and other iwi a strong sense of identity and connection with the land and water. • Rivers, wetlands and springs were used holistically; River Iwi and other iwi understood 			

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	<p>the functional relationships with and between all parts of the rivers, wetlands and springs, spiritually and physically as kaitiaki.</p> <ul style="list-style-type: none"> • Tribal taniwha and tupua dwell in the rivers which are also the location of continued spiritual and cultural traditions and practices maintained over the many centuries. • Iwi tupuna inhabited a rohe that teemed with life in the rivers, wetlands and springs. • These resources were subject to access and use rights as an essential part of kaitiakitanga. • Iwi strive to maintain and restore these relationships despite the modification and destruction that has occurred through different types of development affecting the rivers, wetlands and springs. 				
<p>3.11.1.2 Values and uses for the Waikato and Waipa Rivers</p> <p>Mana Tangata – Use values</p>	<p>Insert new use value:</p> <p><u>Tāngata whenua Ancestral land development</u></p> <table border="1" data-bbox="454 1166 1323 1394"> <tr> <td data-bbox="454 1166 741 1394"> <p><u>The ability for tāngata whenua to fully exercise the relationship with Tāngata Whenua Ancestral land</u></p> </td> <td data-bbox="741 1166 1323 1394"> <ul style="list-style-type: none"> ▪ <u>The development and use of tāngata whenua ancestral land is provided for in ways that give effect to the outcomes anticipated by Treaty settlements.</u> ▪ <u>Recognise the historical context in which Iwi were excluded from the economic activities and benefits that have</u> </td> </tr> </table>		<p><u>The ability for tāngata whenua to fully exercise the relationship with Tāngata Whenua Ancestral land</u></p>	<ul style="list-style-type: none"> ▪ <u>The development and use of tāngata whenua ancestral land is provided for in ways that give effect to the outcomes anticipated by Treaty settlements.</u> ▪ <u>Recognise the historical context in which Iwi were excluded from the economic activities and benefits that have</u> 	<p>The use values associated with Tāngata whenua Ancestral land need to be recognised in order to be compliant with the requirements of the RMA, in particular ss 5, 6(e), 7(a) & 8 RMA.</p> <p>Tāngata whenua Ancestral land is now being returned through the Treaty settlement process. This context, and the historical context whereby Iwi were excluded from the economic activities and benefits that have contributed to the degradation of the rivers, wetlands and springs must also be recognised in the values that inform the proposal.</p>
<p><u>The ability for tāngata whenua to fully exercise the relationship with Tāngata Whenua Ancestral land</u></p>	<ul style="list-style-type: none"> ▪ <u>The development and use of tāngata whenua ancestral land is provided for in ways that give effect to the outcomes anticipated by Treaty settlements.</u> ▪ <u>Recognise the historical context in which Iwi were excluded from the economic activities and benefits that have</u> 				

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		<p><u>contributed to the degradation of the rivers, wetlands and springs.</u></p> <ul style="list-style-type: none"> ▪ <u>Where tāngata whenua are acquiring ancestral lands and means through Treaty settlements, there is a need to provide for tāngata whenua economic development of Tangata Whenua ancestral lands taking into account the principles of the Treaty of Waitangi pursuant to section 8 of the RMA.</u> 	
3.11.1 Objectives	Link the objectives to the relevant policies and state that they are non-hierarchical.		
Objective 4	<p>Amendments to Objective 4:</p> <p>Objective 4/ Te Whāinga 4:</p> <p>Tangata whenua values are integrated into the management of the rivers and other water bodies within the Waikato and Waipā River catchments such that:</p> <ul style="list-style-type: none"> a. Tangata whenua have the ability to: <ul style="list-style-type: none"> i. <u>use and develop land acquired as cultural and commercial redress to support their social, cultural and economic development; and</u> ii. manage their own lands and resources <u>including tangata whenua ancestral lands</u>, by exercising <u>mana or mana whakahaere</u>, for the benefit of their people; and 		<p>The use values associated with Tāngata whenua Ancestral land need to be recognised in order to be compliant with the requirements of the RMA, in particular ss 5, 6(e), 7(a), & 8 RMA.</p> <p>Tāngata whenua Ancestral land is now being returned through the Treaty settlement process. This context, and the historical context whereby Iwi were excluded from the economic activities and benefits that have contributed to the degradation of the rivers, wetlands and springs must also be recognised in the objectives that inform the proposal.</p>

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	<ul style="list-style-type: none"> iii. actively sustain a relationship with <u>tangata whenua</u> ancestral land and with the rivers and other water bodies in the catchment; and b. Any impediments to the flexibility of the use <u>and development</u> of tangata whenua ancestral lands and land returned via Treaty settlements <u>are minimised or</u> restricted to those necessary to give effect to Te Ture Whaimana o Te Awa o Waikato; and c. <u>Overall</u> improvement in the rivers' water quality and the exercise of kaitiakitanga increase the spiritual and physical wellbeing of iwi and their tribal and cultural identity. 	
3.11.2 Policies	Amend the policies to address the matters raised in this appeal, including not limiting consent durations on tangata whenua ancestral lands, and as below.	
Policy 10	Reinstate paragraphs a-d from Policy 7 as originally notified and with amendments to paragraph b consistent with the matters raised in this appeal.	
Policy 18	<p>Amendments to Policy 18:</p> <p>Policy 18/Te Kaupapa Here 18:</p> <p>For the purposes of considering land use change applications enabling the <u>use and development</u> of tangata whenua ancestral lands, recognise and provide for:</p> <ul style="list-style-type: none"> a. The relationship of tangata whenua with their ancestral lands; and 	include use as well as development as an aspect of policy 18.

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	<p>b. The exercise of kaitiakitanga; and</p> <p>c. The creation of positive economic, social and cultural benefits for tangata whenua now and into the future, in a way that gives effect to Te Ture Whaimana o Te Awa o Waikato.</p>	
Rule 3.11.4.7	<p>Insertion of a new rule Restricted Discretionary Activity Rule – Land Use Change for Tāngata Whenua Ancestral Land:</p> <p><u>Rule 3.11.4.10 – Restricted Discretionary Activity Rule – Land Use Change for Tāngata Whenua Ancestral Land</u></p> <p><u>Any change in the use of tāngata whenua ancestral land from that which was occurring at 22 October 2016 to an activity that does not comply with the conditions, standard or terms of Rules 3.11.4.1 to 3.11.4.9 and the associated diffuse discharge of nitrogen, phosphorus, sediment and microbial pathogens onto or into land in circumstances which may result in those contaminants entering water is a restricted discretionary activity (requiring resource consent).</u></p> <p><u>Waikato Regional Council restricts its discretion over the following matters:</u></p> <ol style="list-style-type: none"> i. <u>Relationship of tāngata whenua with their ancestral lands.</u> ii. <u>The exercise of kaitiakitanga.</u> iii. <u>The creation of positive economic, social and cultural benefits for tāngata whenua now and into the future.</u> iv. <u>The use of best management practice actions for nitrogen, phosphorus, sediment and microbial pathogens for the new type of land use.</u> 	<p>This restricted discretionary rule provides an appropriate discretion to Council in considering applications for change in use of Tāngata Whenua Ancestral Land. This discretion (as compared to the non-complying activity applying to other types of land) is entirely appropriate when seen in the proper historical context that is addressed above. Because of this context, the discretion provided by this rule will give rise to greater benefits due to historical grievances that are sought to be remedied through the return of lands in Treaty settlements. As such there is an effects basis for the differential treatment of these different types of land.</p> <p>The proposed restricted discretionary rule is not inconsistent with giving effect to the Vision and Strategy. No discharge is allocated by the rule. Council may decline any application that would give rise to undue effects on the rivers. The matters of discretion provide robust criteria against which to consider applications for change in use.</p> <p>There is no legal or technical impediment to the proposed restricted discretionary rule.</p>

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	<ul style="list-style-type: none"> v. <u>The suitability of the land for development into the proposed new type of land use.</u> vi. <u>The short term targets in Objective 2.</u> vii. <u>Cumulative effects on water quality of the catchment of the Waikato and Waipa Rivers.</u> viii. <u>The diffuse discharge of nitrogen, phosphorus, sediment and microbial pathogens.</u> ix. <u>The need for and the content of a Farm Environment Plan.</u> x. <u>The term of the resource consent.</u> xi. <u>The monitoring, record keeping, reporting and information provision requirements for the holder of the resource consent.</u> xii. <u>The time frame and circumstances under which the consent conditions may be reviewed.</u> xiii. <u>The matters addressed by Schedules A-E.</u> 	
Rule 3.11.4.9	<p>Amendment of Non-Complying Activity Rule as Rule 3.11.4.9 as a consequence of the Restricted Discretionary Activity Rule:</p> <p>Rule 3.11.4.9 - Non-Complying Activity Rule – Land Use Change</p> <p><u>Except as provided for in Rule 3.11.4.7 Notwithstanding any other rule in this Plan,</u> the following changes in the use of land are non-complying activities:</p> <ul style="list-style-type: none"> 1. Any change in the use of land to commercial vegetable production that, either itself or in combination with any extant resource consents, is not regulated by Rule 3.11.4.5 and does not meet the conditions of Rule 3.11.4.8. 	These consequential changes are necessary as a result of insertion of the restricted discretionary rule.

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	<p>2. Any of the following changes in land use within a property, where the change exceeds a cumulative net total of 4.1 ha from that which was occurring at 22 October 2016:</p> <ul style="list-style-type: none"> a. Woody vegetation to farming; or b. Any land use to dairy farming. 	
<p>Definition - Tangata whenua ancestral lands</p>	<p>Amend definition of Tangata Whenua Ancestral Land:</p> <p>Tangata whenua ancestral lands: means land that has been returned through settlement processes between the Crown and tangata whenua, or is, as at the date of notification (22 October 2016), Māori freehold land <u>and general land</u> under the jurisdiction of Te Ture Whenua Maori Act 1993.</p>	<p>These changes improve the accuracy and clarity of the definition</p>
<p>2. Matters of Significance to Maori</p> <p>2.1.1 General</p>	<p>Inclusion of paragraph relating to Hauraki iwi interests in the catchment and redress legislation to the consequential amendments Chapter 2 of the operative Regional Plan:</p> <p><u>Hauraki iwi are recognised as having an interest in an area extending over the Waikato River catchment. The Pare Hauraki collective redress legislation provides for Hauraki iwi to be involved in the governance and management of the catchment within their rohe.</u></p>	<p>These consequential changes reflect a proper inclusion of recognition of Pare Hauraki interests.</p>
<p>3.1 Water Resources</p>	<p>Inclusion in second box of paragraph relating to Hauraki iwi interest in the catchment and redress legislation to the consequential amendments</p>	<p>These consequential changes reflect a proper inclusion of recognition of Pare Hauraki interests.</p>

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3.1 Background and Explanation	<p>Chapter 2 of the operative Regional Plan. Add new sentences as third para in section "Tangata Whenua":</p> <p><u>Hauraki iwi are recognised as having an interest in an area extending over the Waikato River catchment. The Pare Hauraki collective redress legislation provides for Hauraki iwi to be involved in the governance and management of the catchment within their rohe.</u></p>	