

**BEFORE THE HEARING PANEL**

**IN THE MATTER** of the Resource Management Act 1991

**AND**

**IN THE MATTER** of Proposed Plan Change 12 to the Operative Hamilton  
City District Plan

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**STATEMENT OF EVIDENCE OF JULIAN WILLIAMS**

**Dated 20 December 2022**

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## INTRODUCTION

Ka mātakitaki iho au ki te riu o Waikato  
Anō nei hei kapo kau ake māku  
Ki te kapu o taku ringa,  
Ka whakamiri noa I tōna aratau,  
E tia nei he tupu pua hou.

Kia hiwa ake au I te tihi o Pirongia,  
Inā hei toronga whakaruruhau mōna  
Ki tōku tauawhirotanga.

Anā! Te ngoto o tōna ngāwhā I ōna uma kīhai I ārikarika  
A Maungatautari, a Maungakawa, Ōku puke maunga, ngā taonga tuku iho:  
Hoki ake nei au ki tōku awa koiora  
Me ōna pikonga, he kura tangihia o te mātāmuri.

E whakawhiti atu ai I te kōpū mania O Kirikiriroa  
Me ōna māra kai, te ngāwhā whakatupu  
Ake o te whenua mōmona,  
Hei kawē ki Ngāruawāhia,  
Te huinga o te tangata.

Tiihei mauriora

1. My name is Julian Williams. I am of Ngaati Makirangi descent, a hapuu of Waikato iwi. I hold a Bachelor of Social Sciences under the Resource and Environmental Planning programme. I have 23 years' experience in the environmental space, working with, and mediating policy and consenting matters between, industry, councils and mana whenua.
2. I am the founding Director of a small consultancy, Te Huia Natural Resources Limited, established in 2016. We have led contracts on behalf

of iwi and hapuu to develop mana whenua reports, cultural assessments, technical advice and facilitation, which largely include assessments of activities against the objectives of Te Ture Whaimana o te Awa o Waikato (Vision and Strategy for the Waikato River) (**Te Ture Whaimana**) and associated Iwi Environmental Plans.

3. Prior to establishing our consultancy, for 13 years I worked for Waikato-Tainui as an advisor for the Waikato River Settlement, technician to the Freshwater Iwi Leaders Group including the architecture of Te Mana o te Wai, and general manager for the implementation of settlement tools and obligations. I currently hold contracts with the Waikato River Authority, Hamilton City Council (**HCC**), Department of Internal Affairs and various other projects with Government sectors.
4. I was contractually engaged by HCC to lead the engagement with mana whenua and develop associated reports to be considered in the drafting of proposed Plan Change 12 (**PC12**) and Plan Change 9 (**PC9**).
5. The general format of my evidence is as follows:
  - a) Context to the cultural and spiritual significance of the Waikato River;
  - b) To provide context to the Waikato River Settlement and co-management arrangements;
  - c) Focus on Te Ture Whaimana, its impact and objectives; and
  - d) Provide an overview of the application of Te Ture Whaimana by HCC.

#### **SCOPE OF EVIDENCE**

6. At the outset, I defer to Waikato-Tainui and mana whenua groups in relation to the significant history and cultural issues that are relevant to Kirikiriroa-Hamilton.

7. The purpose of my evidence is to set out the background and context of Te Ture Whaimana so that its significance, as the primary direction setting instrument for the River and activities within its catchment, which includes urban development, can be fully understood.
8. In particular, I address the role of Te Ture Whaimana in the context of PC12 to Hamilton City's District Plan (**DP**) in response to the National Policy Statement on Urban Development (**NPS-UD**) and the Resource Management (Enabling Housing Supply and Other Matters) Amendment Act.

#### **EXECUTIVE SUMMARY**

9. The River represents the mana (spiritual authority and power) and the mauri (life force) of the Waikato people. The relationship with the River lies at the heart of our spiritual and physical well-being and identity and the water is its life blood.
10. For Waikato-Tainui the River represents much more than a body of water, it is a living ancestor to our people and fundamental to our beliefs. The Waikato River is a living ancestor. It is part of us. Our River symbolises a tupuna, it is the name from which our tribe derives its identity and the issues that affect our River ultimately affects the tribe and its people.
11. In July 1863, military forces of the Crown unjustly invaded the Waikato, initiating hostilities against the Kiingitanga and its people. To Waikato-Tainui, the Raupatu (confiscation) of the 1860s was a double blow. Waikato-Tainui were driven both from their lands, and from their tupuna Awa.
12. For Waikato-Tainui, the greatest impact of the Raupatu in respect of the River has been the removal of its capacity to protect the River in the

decades of rapid change that followed. Waikato-Tainui's authority and tikanga were ignored, as if it had not existed for hundreds of years.

13. Te Ture Whaimana is a critical part of Waikato Tainui's Waikato River Settlement with the Crown, and is intended by Parliament to be the primary direction-setting document for the Waikato River and activities within its catchment affecting the Waikato River. Giving effect to Te Ture Whaimana is critical to delivering on these settlement obligations.
14. Although the mamae (hurt), anger and sadness remains, through settlement and forming partnerships with key stakeholders, Waikato-Tainui has worked tirelessly to address, and mitigate, the negative impact on the Awa. Te Ture Whaimana is one such example where the Iwi has gifted a powerful tool to the community and region so that all activities and decisions consider the health and wellbeing of the River as paramount.
15. Te Ture Whaimana sets a new bar in terms of the management of the effects of land use, including residential development. In order to give effect to Te Ture Whaimana it is not sufficient to avoid adverse effects on the River. Instead, some proportionate contribution to the ongoing restoration and protection of our tupuna is required. Actions which contribute to the ongoing degradation of our ancestor must end.
16. I acknowledge that the required changes to achieve Te Ture Whaimana will take many years, and is not the sole responsibility of HCC to achieve. However, HCC is part of a collective who hold responsibilities to the Waikato River and I believe that the provisions in proposed PC12 provide positive steps to restoring and protecting the health and well-being of the Waikato River, while appropriately responding to housing supply for the City.

## TE TUPUNA AWA

17. It is important to begin this evidence by sharing the significance of the Waikato River to Waikato-Tainui and taangata whenua, or the people of these lands and waters. The significance of the Awa to Waikato-Tainui was one important aspect of the settlement of the historical breaches of the Crown in relation to the River and gives rise to the mana (status and authority) of the River settlement arrangements that the hearing panel will consider over the following months.
18. The following statement of significance was made in the Waikato-Tainui Deed of Settlement in relation to the Waikato River (2009) (**the River Deed**):

Ka mau Te Pukapuka Whakaaetanga me oona Whakatau a Tikanga i ngaa Kupu whakahirahira mo Te Awa o Waikato ki ngaa Iwi o Waikato-Tainui.

He tuupuna noo ngaa iwi o Waikato-Tainui, Te Awa o Waikato. E mau ana te mana te mauri me te kaha o te Iwi.  
He mauri tu tahi e kore e wehea. Ka rere mai oona wai i Te wairere o Huka puta atu ki te Puuaha o Waikato. Ka hono haere ai ngaa wai o Te Awa o Waikato i ngaa parenga, i ngaa whaiawa, i nga momo takawai o raro, i ngaa rerenga, i ngaa waikeri, i ngaa wehenga, i ngaa roto, i ngaa ika, i ngaa tupunga otaota, i ngaa maania, i ngaa repo, i ngaa motu, i ngaa puna, i ngaa arawai o te awa, i ngaa ararangi o te awa, i ngaa tuaapapa o te awa, tae noa ki oona tohu a wairua me toona mauri.

Naa too maatou hononga ki te awa, naa too maatou manaaki i te awa te take ka tiaki i te mana o te awa, aa, ka riro maa maatou taua mana whakahaere i runga i ngaa tikanga tuku iho mo te awa.

No reira, naa too maatou hononga ki te awa hei kaitiaki te puutake o too maatou oranga a wairua, oranga a tinana, a, tae noa ki oo maatou tikanga a iwi katoa.

19. In English, that statement of significance translates to:

The Waikato River is our tupuna (ancestor) which has mana (spiritual authority and power) and in turn represents the mana and mauri (life force) of Waikato-Tainui.

The Waikato River is a single indivisible being that flows from Te Taheke Hukahuka to Te Puuaha o Waikato (the mouth) and includes its waters, banks and beds (and all minerals under them) and its

streams, waterways, tributaries, lakes, aquatic fisheries, vegetation, flood plains, wetlands, islands, springs, water column, airspace and substratum as well as its metaphysical being.

Our relationship with the Waikato River, and our respect for it, gives rise to our responsibilities to protect te mana o te Awa and to exercise our mana whakahaere in accordance with long established tikanga to ensure the wellbeing of the River.

Our relationship with the River and our respect for it lies at the heart of our spiritual and physical wellbeing, and our tribal identity and culture.

20. In the River Deed, the Crown acknowledges the mamae (hurt) caused to the Awa and Waikato-Tainui by its act of raupatu (confiscation) of 1.2 million acres of land, of which Hamilton City is wholly located within.
21. The River Deed continues to express the relationship of Waikato-Tainui with its ancestral river. Waikato-Tainui has established mana whakahaere over the Awa, and its wider rohe (area), over many generations. Mana whakahaere refers to the exercise of rights (such as control) and responsibilities (such as kaitiakitanga) to protect the mauri of the Awa and other resources in their rohe (area or space). The mauri of the Awa has an impact on the Waikato rohe at large.
22. The mana whakahaere established by Waikato-Tainui is demonstrated in the well-known whakataukii (proverbial saying):

Waikato Taniwha rau!  
He piko he taniwha, he piko he taniwha!"  
"Waikato of a hundred chiefs!  
At every bend a chief, at every bend a chief!

23. This whakataukii indicates the extent of the strong leadership in the Waikato, among many communities living all along the banks of the River, which were united in their relationship with the River.
24. The way of life for Waikato-Tainui evolved over centuries, centred around the River and its streams, lakes and wetlands. Marae and papakaainga

(villages) were built by the River; moved constantly up and down it in fleets of many and relied on its rich fisheries, its birds and plant life.

25. Waikato-Tainui came to understand the mood of the Awa and, over time, it became a core part of our identity. For many years after Aotearoa became a British colony in 1840, the River culture of Waikato-Tainui and their authority over the River was unchallenged.
26. The River represents the mana (spiritual authority and power) and the mauri (life force) of the Waikato people. The relationship with the River lies at the heart of our spiritual and physical well-being and identity and the water is its life blood.
27. For Waikato-Tainui the River represents much more than a body of water, it is a living ancestor to our people and fundamental to our beliefs. The late Pumi Taituha, rangatira and kaumatua summed up our relationship with our Awa nicely, noting:

The Waikato River is a living ancestor. It is part of us. Our River, symbolises a tupuna, it is the name from which our tribe derives its identity and the issues that affect our River ultimately affects the tribe and its people.

28. At this point, I believe it is important to note the scope of the Waikato River as it applies to Te Ture Whaimana and activities that may affect it. The significance of the Waikato River and the Treaty settlement is reflected in the "Statement of significance of the Waikato-River to Waikato Tainui" in the Waikato-Tainui River Settlement Act which states (among other things):

- (3) The Waikato River is our tupuna (ancestor) which has mana (spiritual authority and power) and in turn represents the mana and mauri (life force) of Waikato-Tainui. The Waikato River is a single indivisible being that flows from Te Taheke Hukahuka to Te Puuaha o Waikato (the mouth) and includes its waters, banks and beds (and all minerals under them) and its streams, waterways, tributaries, lakes, aquatic fisheries, vegetation, flood plains, wetlands, islands, springs, water column, airspace, and substratum as well as its metaphysical being. Our relationship with the Waikato River, and our respect for it, gives rise to our

responsibilities to protect te mana o te Awa and to exercise our mana whakahaere in accordance with long established tikanga to ensure the wellbeing of the river. Our relationship with the river and our respect for it lies at the heart of our spiritual and physical wellbeing, and our tribal identity and culture.

### **Kiingitanga and Raupatu**

29. As the process of British settlement and colonial self-rule gathered momentum, Waikato-Tainui became concerned at the apparent lack of respect for Maaori rights. The establishment of the Kiingitanga in 1858 was a direct response to this concern and a safeguard for Waikato-Tainui and Maaori generally to ensure Maaori autonomy was recognised and maintained.
30. Waikato-Tainui accepted this responsibility and Pootatau Te Wherowhero became the first Maaori King. Manaakitanga was one core element for the selection of Pootatau Te Wherowhero as the first Maaori King. The Awa was, at that time, an abundant source of kai and the ability of Waikato-Tainui to sustain all manuwhiri of the King was a key strength, supporting his ability to take up the position of King. Since then, the history of the Waikato-Tainui people, and of its relationship with the Crown, is inseparable from the history of the Kiingitanga.
31. The Crown acknowledged in its 1995 Settlement with Waikato-Tainui that the New Zealand Government perceived the Kiingitanga as a challenge to the authority of the Crown. In July 1863, military forces of the Crown unjustly invaded the Waikato, initiating hostilities against the Kiingitanga and its people. To Waikato-Tainui, the Raupatu (confiscation) of the 1860s was a double blow. Waikato-Tainui were driven both from their lands, and from their tupuna Awa.
32. For the River, as well as the land, the impact of Raupatu was immediate. The Crown appropriated control of the River for military purposes and the

River became subject to the jurisdiction of Crown law and many different authorities.

33. The Raupatu was not just a series of hostilities; it was an invasion by land and by River and an intrusion into a way of life of Waikato-Tainui which would have been unimaginable in years beforehand. Many villages along the River were abandoned as British troops moved south, and Waikato-Tainui were exiled to the King Country.
34. Waikato-Tainui lost the freedom of our River and its network and portages, an artery central to tribal relationships was severed; from Mokau in the South through to Manukau in the North; to the East across the Hauraki Plains; and South to Taumarunui, where the link could be made west into the Whanganui River.
35. For Waikato-Tainui, the greatest impact of the Raupatu in respect of the River has been the removal of its capacity to protect the River in the decades of rapid change that followed. Waikato-Tainui's authority and tikanga were ignored, as if it had not existed for hundreds of years.
36. Although the mamae (hurt), anger and sadness remains, through settlement and forming partnerships with key stakeholders, Waikato-Tainui has worked tirelessly to address, and mitigate, the negative impact on the Awa. Te Ture Whaimana is one such example where the Iwi has gifted a powerful tool to the community and region so that all activities and decisions consider the health and wellbeing of the River as paramount.

### **Waikato River Settlement Principles and Co- Management Arrangements**

37. The paragraphs in this section are reflective of the evidence delivered by the Chief Executive for Waikato-Tainui, Donna Liarne Arihia Flavell, on behalf of Te Whakakitenga of Waikato Incorporated at the 2021 Board of Inquiry hearing for a water take consent by Watercare Services Ltd. These

statements are the most recent expression of the settlement principles as told by Waikato-Tainui, and I respectfully borrow from Ms Flavell's korero.

38. The Waikato River Settlement arises as a result of Raupatu and the confiscations that followed in the 1860s. The Crown's confiscation boundary encompasses much of the River and its associated waterways. Hamilton City, its land, waterways and taonga, sit wholly inside the confiscation boundary.
39. The grievances that Waikato-Tainui carry stem from the confiscation of the River as much as from the confiscation of our lands. The spiritual and cultural wellbeing of Waikato-Tainui along with our economy and future development depend on maintaining our relationship with the River as well as the land.
40. To address this, in March 1987, the late Sir Robert Mahuta, on behalf of himself and members of Waikato-Tainui, the members of the Tainui Maaori Trust Board and Ngaa Marae Toopu, filed a claim with the Waitangi Tribunal.
41. This claim sought to address matters relating to:
  - a) The Waikato River;
  - b) Waikato-Tainui lands (being those confiscated from Waikato-Tainui under the purported authority of the New Zealand Settlements Act 1863); and
  - c) The West Coast Harbours (being Kaawhia, Whaaingarua, Aotea, and Manukau
42. In 1995 the land (except for the Wairoa and Waiuku land blocks) was settled with the Crown. Approximately 3% of the lands confiscated were

returned to the Iwi including lands now recognised as The Base, Ruakura, the University of Waikato and properties within the Hamilton CBD.

43. The remaining component parts were excluded from settlement and set aside to be resolved later.
44. Waikato-Tainui entered into a Deed of Settlement in 2008 regarding the historic Waikato River claim under Te Tiriti o Waitangi, which was subsequently reviewed, and an amended Deed was signed in 2009 (**River Settlement**).
45. Relevant to PC12, in my view, the Waikato River Settlement negotiations specifically addressed the following grievance:

in providing a legislative framework for land use planning, water use planning and resource planning which failed to properly take into account Waikato-Tainui concerns for the Waikato River and which were inappropriate for the protection of Waikato-Tainui rights guaranteed by the Treaty.
46. Those negotiations resulted in deeds and ultimately three Acts of Parliament:
  - a) The Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010 (**Waikato-Tainui River Settlement Act**);
  - b) The Ngāti Tūwharetoa, Raukawa, and Te Arawa River Iwi Waikato River Act 2010; and
  - c) The Ngā Wai o Maniapoto (Waipā River) Act 2012.
47. The preamble to the Waikato-Tainui River Settlement Act sets out an important reminder of the history and context of grievances, Crown Treaty breaches and the consequent impacts on the River and the people. RMA processes and consent hearings are specifically identified in that preamble.

48. The River settlement marked the genesis of the Crown's statutory recognition of Te Mana o te Awa, mana whakahaere and the establishment of a co-governance and co-management approach between Waikato-Tainui and the Crown regarding matters relating to the Waikato River. The mechanisms were the first of its kind in New Zealand.
49. The overarching purpose of the Waikato-Tainui River Settlement Act is to *"restore and protect the health and wellbeing of the Waikato River for future generations"*.<sup>1</sup>

### **Te Mana o te Awa**

50. Te Mana o te Awa is the first cornerstone principle of the River Settlement and is focused on the River's health and wellbeing.
51. It is the view of Waikato-Tainui that the nation has received benefits derived from the River and though it is the backbone for a number of sectors, it has been overexploited resulting in its degradation.
52. The Waikato River's commercial value to the nation has meant that its health and wellbeing has never been at the forefront of any form of decision-making in the past.
53. A comprehensive approach was needed to find an innovative solution to achieve te mana o te awa – improvement in the River's health and wellbeing.
54. This required a clear and direct overarching purpose – to restore and protect the health and wellbeing of the Waikato River for future generations.

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<sup>1</sup> Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010, s 3.

55. The relationship with our tupuna Awa is central to our identity – Waikato te Awa, Waikato te Iwi. The Waikato River is a living ancestor to our people and is fundamental to our beliefs.
56. Without wai there is no hauanga kai for the people, no whitebaiting, no catching tuna, no access to our plants for making our kete, no safe drinking water for our marae and our people. Wai drives our existence culturally, spiritually, and physically.
57. This is one of the reasons why the River's health and wellbeing was the key focus of the Waikato-Tainui negotiations and the importance of the legislative primacy of Te Ture Whaimana.
58. This re-emphasised the position of the Waikato River as being more than a mere commodity. But more importantly, it was a concept that all stakeholders and communities along the River agreed with.
59. In order to support the idea of protecting and restoring the River, while recognising the socio-economic connections between Waikato-Tainui and the communities within it, definitions had to consider the River holistically and so capture all physical aspects – the water, bed, banks, and floodplains – as well as its metaphysical being.
60. The River Settlement is unique because it recognises the special relationship that the Waikato people – and indeed all other River iwi have with the River and, it is important that the obligations of the River Settlement are central when decisions regarding activities associated with freshwater are being made.

### **Mana Whakahaere**

61. Mana whakahaere is the second cornerstone principle of the River Settlement and focusses on the exercising of our authority, rights, and

responsibilities towards the protection of the River and all its resources in a holistic way.

62. Mechanisms under the settlement that seek to advance the rights and authority of Waikato-Tainui include the Joint Management Agreement with HCC, Ministerial Accords with 9 government agencies, Bylaws, and the elevated recognition of the Waikato-Tainui Environmental Plan.

### **The Waikato River Authority**

63. One of the mechanisms embedded in the settlement was the establishment of the Waikato River Authority (**WRA**). The WRA was established as an independent statutory authority under the Waikato-Tainui River Settlement Act and the Ngāti Tūwharetoa, Raukawa, and Te Arawa River Iwi Waikato River Act 2010, and the WRA has additional functions under the Ngā Wai o Maniapoto (Waipā River) Act 2012.

64. The purpose of the WRA is to:<sup>2</sup>
- a) Set the primary direction through Te Ture Whaimana to achieve the restoration and protection of the health and wellbeing of the Waikato and Waipaa Rivers for future generations;
  - b) Promote an integrated, holistic, and co-ordinated approach to the implementation of Te Ture Whaimana and the management of the Waikato and Waipaa Rivers; and
  - c) Fund rehabilitation initiatives for the Waikato and Waipaa Rivers in its role as trustee for the Waikato River Clean-Up Trust.
65. A central statutory responsibility for the WRA is to give effect to Te Ture Whaimana, the 'primary direction setting document for the Waikato River'.

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<sup>2</sup> Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010, s 22.

The WRA reviews, prepares, approves and oversees the implementation of Te Ture Whaimana.

66. The WRA is a submitter to PC12. In its submission, the WRA noted that in its submission to the Parliamentary Environment Select Committee for the Resource Management (Enabling Housing Supply and Other Matter) Amendment Bill, the WRA:
- a) Sought confidence from the Environment Committee that the integrity, spirit and principles of the Settlement and primary functions of the WRA, are protected from any conflicts in the Bill;
  - b) Noted its support to provide affordable housing for whaanau. However, the WRA wanted assurance that the health and wellbeing of the Waikato and Waipaa Rivers will not be required to absorb further degradation due to the permitted nature of intensification provided in the Bill;
  - c) Was concerned that the Bill would unintentionally provide for permitted spread of intensification which would compromise the quality of water services provided (water supply, stormwater, wastewater) and therefore create further degradation of the Waikato and Waipaa Rivers; and
  - d) Sought explicit recognition of Te Ture Whaimana as a Qualifying Matter under sections 77G, 77H, 77I, 77L, 77M and 77N of the Bill. And furthermore, that Tier 1 authorities should demonstrate that the Vision and Strategy for the Waikato and Waipaa Rivers will be provided for, when considering MDRS and urban non-residential zones.

## Te Ture Whaimana o te Awa Waikato

67. Te Ture Whaimana was redress to Waikato-Tainui (and to other River iwi with interests in the Waikato River and its catchment) to improve the management of freshwater and ensure all iwi, water users, and the community share a desire for the continual improvement to the quality of freshwater in the Waikato over time in a way that improves the health and wellbeing of people but also our social, cultural, and economic prosperity as a region.

68. Waikato-Tainui aspires to restore our environment to the state that Kiingi Taawhiao observed when he composed his Maimai Aroha:

Tooku awa koiora me oona pikonga he kura tangihia o te maataamuri.

The river of life, each curve more beautiful than the last.

69. Te Ture Whaimana is a central element of the unique legislation enacted in relation to the Waikato River, its catchment, and all it encompasses including the Waipaa River.

70. The legislation reflects a long history and recognises the mana of the rivers themselves (Te Mana o Te Awa) and the significance of the relationship between the Iwi and the rivers (Mana Whakahaere).

71. Section 5(1) of the Waikato-Tainui River Settlement Act provides "*the Vision and Strategy is intended by Parliament to be the primary direction-setting document for the Waikato River and activities within its catchment affecting the Waikato River.*"

72. Te Ture Whaimana prevails over any inconsistent provision in any National Policy Statement (**NPS**) and the New Zealand Coastal Policy Statement (**NZCPS**), where there is a conflict. In my view, the current provisions of

PC12 to manage housing supply, is consistent with the vision and objectives of Te Ture Whaimana.

73. Te Ture Whaimana is unique under the RMA in that it has been incorporated directly into the Waikato Regional Policy Statement (**RPS**), and the rest of the RPS must be consistent with Te Ture Whaimana;
74. Te Ture Whaimana is also unique in that it prevails over any inconsistent provision in an NPS or the NZCPS, and amendments cannot be made to RMA planning documents to give effect to an NPS/NZCPS, if that would make the document inconsistent with Te Ture Whaimana;
75. A regional plan must consequently 'give effect to' Te Ture Whaimana (as it forms part of the RPS).
76. Te Ture Whaimana ensures the betterment of the Waikato and Waipaa Rivers through its influence in all RMA planning documents, including the RPS, and 19 other pieces of legislation which impact decisions related to the Waikato and Waipaa Rivers.
77. The matters reinforce the pre-eminent weight to be afforded to Te Ture Whaimana when decisions are being made under the RMA. There is no other example nationally of an external planning document that is to be given greater weight and effect through RMA planning processes.
78. Te Ture Whaimana contains a set of objectives and strategies to advance the vision for the Waikato River which is to restore and protect the health and wellbeing of the Waikato River, and all it embraces, for future generations. The objectives are:
  - a) The restoration and protection of the health and wellbeing of the Waikato River.

- b) The restoration and protection of the relationship of Waikato-Tainui with the Waikato River, including their economic, social, cultural, and spiritual relationships.
- c) The restoration and protection of the relationship of Waikato River Iwi according to their tikanga and kawa, with the Waikato River, including their economic, social, cultural and spiritual relationships.
- d) The restoration and protection of the relationship of the Waikato region's communities with the Waikato River including their economic, social, cultural and spiritual relationships.
- e) The integrated, holistic and coordinated approach to management of the natural, physical, cultural and historic resources of the Waikato River.
- f) The adoption of a precautionary approach towards decisions that may result in significant adverse effects on the Waikato River, and in particular those effects that threaten serious or irreversible damage to the Waikato River.
- g) The recognition and avoidance of adverse cumulative effects, and potential cumulative effects, of activities undertaken both on the Waikato River and within its catchments on the health and wellbeing of the Waikato River.
- h) The recognition that the Waikato River is degraded and should not be required to absorb further degradation as a result of human activities.
- i) The protection and enhancement of significant sites, fisheries, flora and fauna.

- j) The recognition that the strategic importance of the Waikato River to New Zealand's social, cultural, environmental and economic wellbeing is subject to the restoration and protection of the health and wellbeing of the Waikato River.
  - k) The restoration of water quality within the Waikato River so that it is safe for people to swim in and take food from over its entire length.
  - l) The promotion of improved access to the Waikato River to better enable sporting, recreational, and cultural opportunities.
  - m) The application to the above of both Mātauranga Māori and latest available scientific methods.
79. The objectives of Te Ture Whaimana are not written as a hierarchy list. It is intended that they are all considered equally, and in a manner that best advances the vision.
80. Te Ture Whaimana aspires to 'restore and protect', rather than 'avoid, remedy and mitigate' as guided by the RMA. Waikato Tainui, and the WRA consider that there are fundamental differences in these meanings, and that the application of 'restore and protect' calls for a restoration approach that is a level above current practices to achieve sustainability under the RMA.
81. To ignore the status of Te Ture Whaimana would undermine the obligation to give effect to, and apply, the relevant decision-making framework.

### **Giving effect to Te Ture Whaimana**

82. At the time of the introduction of the Waikato River Settlement, and Te Ture Whaimana, it should be noted that HCC was working through its ten-year planning phase and review of what is now the operative DP. The implementation of Te Ture Whaimana was a new approach to managing

resources within the catchment and HCC's response was to simply focus on giving effect to the RPS. It was best described as 'taking a minimal approach'. More recent thinking about the significance of Te Ture Whaimana as a primary direction setting instrument for activities affecting the catchment has seen a greater emphasis placed on it, and over the past 12 years, we see some genuine advances with its implementation in PC12. In particular, there is the recognition that it is not sufficient to avoid, remedy or mitigate effects on the river, there must now be a contribution to its ongoing improvement.

83. This next generation of planning documents is becoming more and more tuned in to the significance of giving effect to Te Ture Whaimana. For example, in the Proposed Waikato Regional Plan Change 1 (Healthy Rivers) (PC1) which aims to manage both point source discharges (such as sewage from towns and waste from factories) and non-point source discharges linked to agriculture. In PC1 there is a renewed focus on the management of nitrogen, phosphorus, sediment and bacteria in the Waikato and Waipaa rivers all with the aim of improving the quality of the Awa over time.<sup>3</sup>
84. Ultimately, PC1 seeks to meet the requirements of Te Ture Whaimana in an 80-year journey to achieve rivers that have improved water quality, and are safe for food gathering along their entire length.
85. In determining how to deliver betterment and improved water quality in a proportionate and timely manner, reliance is placed on the Environment Court's observations in *Puke Coal Ltd v Waikato Regional Council*, where the Court stated under the heading "Protect and restore surface water is paramount", that:<sup>4</sup>

[86] We are unanimous in our view that the adoption of the Vision and Strategy Statement of the Settlement Act within the Regional

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<sup>3</sup> [Proposed Waikato Regional Plan Change 1 | Waikato Regional Council](#)

<sup>4</sup> *Puke Coal Ltd v Waikato Regional Council* [2014] NZEnvC 223.

and District Plans, has led to a stepwise change in the approach to consents affecting the catchment of the Waikato River.

[87] We consider that looking at the Waikato River Settlement Act and the Regional and District Plans as a whole, the only reasonable conclusion that can be reached is that there is an intention to improve the catchment of the river itself within a reasonable period of time (several decades) to a condition where it is safe for swimming and food gathering over its entire length.

...

[92] Implicit in the Supreme Court decision was the matter of workable practicality thus any protection or restoration must be proportionate to the impact of the application on the catchment. However, it is clear that it intends to go further than avoiding effect. We have concluded protection and restoration includes preservation from future and restoration from past damage. Restoration can only involve recreation of a past state. Thus, some element of betterment is intended.

86. Based on the intent of the establishing settlements, and the interpretation of the legislation, There is an emerging acceptance that it is no longer sufficient for resource users to demonstrate that adverse effects are avoided, remedied, or mitigated. Instead, resource users should demonstrate that any resource use within the Waikato and Waipaa River catchments will also result in some positive benefit contributing to the restoration of the Waikato River, proportionate to the activity in question. This sets a new bar in terms of managing adverse environmental effects.

### **Hamilton City Council approach**

87. HCC has included the consideration of Te Ture Whaimana in much of its infrastructure design and regulatory functions. Many applicants seeking consent for water takes and discharges, wastewater and stormwater activities, subdivisions or proposed developments, have undertaken assessments against the objectives of Te Ture Whaimana and associated Iwi Environmental Plans.
88. Many of these applications are now accompanied by a Cultural Values Assessment (**CVA**), Cultural Impact Assessment (**CIA**) or Taangata Whenua Statement. These assessments are largely performed by a representative

appointed by taangata whenua who is required to understand the proposal, or application, and undertaken genuine engagement with Iwi and taangata whenua. The assessment generally captures the following:

- a) Overview of the application or proposal;
- b) Historic context to the area of concern;
- c) Activities associated with the proposal;
- d) Assessment of activities against Te Ture Whaimana and its objectives;
- e) Assessment of activities against relevant sections of associated Iwi Environmental Plans;
- f) Proposed recommendations to restore and protect the environment, including opportunities for 'betterment'; and
- g) Decision proposed by Taangata Whenua.

89. As an example, over the past 5 years, HCC has considered Te Ture Whaimana and assessments against its objectives in the following major projects and activities:

- a) Rotokauri ICMP (2017).
- b) Mangakootukutuku Integrated Catchment Management Plan (2017/2020).
- c) Stormwater Master Plan version 2 (2018/2020).
- d) Future Proof – Sub-Regional 3 waters project (2018 – present).
- e) Metro Wastewater Detailed Business Case (2020 – present).

- f) Metro Spatial Plan (2020-21).
  - g) Wastewater Master Plan version 2 (2018) and wastewater capital works projects and programmes in the 2018-2028 Long Term Plan.
  - h) Wastewater Master Plan version 3 (2021) and wastewater capital works projects and programmes in the 2021-2031 Long Term Plan (e.g. Interceptor Upgrades; Pump station Upgrades; Bulk Wastewater Storage Programme).
  - i) Mangakotukutuku Urban Research Hub (MURB) – Monitoring partnership to understand impacts of urbanisation and efficacy of improved stormwater management on urban waterways.
  - j) He Pou Manawa Ora Strategy (2021).
90. The point of noting the above examples is to demonstrate that the consideration of Te Ture Whaimana in the discharge of its responsibilities and decision making, is not a new approach for HCC. It is now firmly embedded in all of its infrastructure and land use decision making.
91. HCC's planning of three waters infrastructure is a critical part of it giving effect to Te Ture Whaimana, and this is reflected in the projects listed above. Managing the effects of development on the three waters networks is key to achieving restoration and protection of the River.
92. HCC does not have a perfect record in terms of managing these effects, and there are recent examples of breaches in relation to its wastewater and stormwater networks. These breaches have a direct adverse effect on the water quality of the River, and achieve the opposite of restoration and protection.
93. I am aware that HCC is restricting the roll out of the Medium Density Residential Standards (**MDRS**) on the basis that this restriction is necessary

to accommodate a matter required to give effect to Te Ture Whaimana. That *matter* relates to the balance between land use and infrastructure.

94. I support this approach because I consider that HCC cannot successfully give effect to Te Ture Whaimana if it allows MDRS to prevail across the residential zones without first ensuring that all adverse effects arising from these increased residential densities can be properly controlled via the three waters infrastructure. Again, the bar is set high. Restoration and protection of the Awa is the goal.
95. I acknowledge that the required changes to achieve Te Ture Whaimana will take many years, and is not the sole responsibility of HCC to achieve. However, HCC is part of a collective who hold responsibilities to the Waikato River and I believe that the provisions in proposed PC12 provide positive steps to restoring and protecting the health and wellbeing of the Waikato River, while appropriately responding to housing supply for the City.

## **CONCLUSION**

96. The River represents the mana (spiritual authority and power) and the mauri (life force) of the Waikato people. The relationship with the River lies at the heart of our spiritual and physical wellbeing and identity and the water is its life blood.
97. For Waikato-Tainui, the River represents much more than a body of water, it is a living ancestor to our people and fundamental to our beliefs. The Waikato River is a living ancestor. It is part of us. Our River symbolises a tupuna, it is the name from which our tribe derives its identity and the issues that affect our River ultimately affects the tribe and its people.
98. Te Ture Whaimana is a critical part of Waikato Tainui's Waikato River Settlement with the Crown, and is intended by Parliament to be the

primary direction-setting document for the Waikato River and activities within its catchment affecting the Waikato River. Giving effect to Te Ture Whaimana is critical to delivering on these settlement obligations.

99. Te Ture Whaimana sets a new bar in terms of the management of the effects of land use, including residential development. Actions which contribute to the ongoing degradation of our ancestor must end. However, in order to give effect to Te Ture Whaimana, it must go further than avoiding adverse effects on the River. As recorded in *Puke Coal* and adopted in the Watercare Board of Inquiry decision, “protection and restoration includes preservation from future and restoration from past damage”.<sup>5</sup> The DP must provide for the concept of betterment of our tupuna in a manner which is proportionate to the nature, scale and location of the proposed activities and address the physical and cultural health of the Awa.

**Julian Williams**

**Dated 20 December 2022**

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<sup>5</sup> *Puke Coal Ltd v Waikato Regional Council* [2014] NZEnvC 223 at [92] and Report and Decision of the Board of Inquiry into the Watercare Waikato River Water Take Proposal dated January 2022 at [211].