

Appeal of the decision of Manawatū-Whanganui Regional Council made under Clause 10 of Schedule 1 of the Resource Management Act 1991

Heading 1: Summary of parts of the decision and reasons for the appeal.

This document sets out:

1. a summary of the decision and the reasons for the appeal, then
2. the specific provision that the decision relates to, and the relief sought.

Part 1 of this appeal sets out five claims, followed by Part 2 of this appeal which sets out the relief sought including specific provisions of the plan change.

The Panels' Recommendation Report is titled '*recommendation of independent hearing panel plan change 2 one plan – existing intensive farming land uses recommendation report of the independent hearing panel appointed by the Manawatū-Whanganui Regional Council pursuant to section 34A of the Resource Management Act 1991*' (dated: 19 March 2021) 266p

This appeal relates primarily to the recommendations at issue 5 – iwi consultation; the relevant part of the decision report is [3.245] – [3.263]. Other parts of the recommendations and decision are relied upon where there are relevant to this main points.

This appeal sets out five (5) claims, which in summary are:

- 1- Inadequacy of evidence and information, the appropriate evaluative baseline scenario, scope¹
- 2- Impacts on Māori values including Māori freshwater values²
- 3- Interim measures, reliance on future freshwater planning processes, direction of travel, status quo³
- 4- Consistency with NPSFM 2017 Objective D and NPSFM 2020 Objective 1 and te mana o te wai⁴
- 5- Process⁵

Each of these points are explained in full below.

See Appendix 1 for analysis of the plan provisions (decisions version)

¹ Section 32 RMA 1991

² Section 6(e) RMA 1991

³ Section 55 RMA 1991

⁴ Sections 61, 66 RMA 1991

⁵ Schedule 1 RMA 1991

Heading 1.1: Appeal point 1 – adequacy of evaluative information, appropriateness of the comparative baseline, scope, under section 32 RMA 1991

The Panels' Recommendation Report focuses on 'two key issues' being the:

1. *statutory requirements of Schedule 1 of the RMA in terms of consultation protocol for plans and plan changes;*
2. *role of a cultural impact assessment in that process.*⁶

Regarding these two points, the Panel concludes:

- *Our finding on this is that, while we generally agree that the Council has met its legal obligations in Schedule 1 to consult with iwi authorities, we are less certain about the efficacy of the nature and timing of the consultation with iwi/hapū and overall we consider that it was not ideal. For example, the submissions to Plan Change 2 from Ngāti Turanga and Te Rūnanga o Raukawa both paint a different picture as to the effectiveness of the nature and the timing of the consultation between themselves and MWRC.*⁷
- *the absence of a specialist cultural values assessment at this stage does not materially impair the determination of PC2; and she considered that its absence is not sufficient cause to delay PC2.*⁸
- *Furthermore the Council points to some considerable reliance or focus on a bigger future process - that being the NPSFM 2020 process - to be a pathway to potentially achieve the aspirations of iwi and hapū of the region. We consider that while this process is inevitable it should not be at the expense of any current and / or ongoing component of fresh water management given the primacy of Te Mana o te Wai in the NPSFM 2020.*⁹
- *Ultimately we have found that there is nothing we can do to rectify the consultation approach that the Council undertook in respect to Plan Change 2. While the approach undertaken could have been better, we do acknowledge the urgency that the Council were acting under to address the matters giving rise to Plan Change 2, as directed by the Environment Court.*¹⁰

⁶ Recommendation Report of the Independent Hearing Panel at [3.249]

⁷ Recommendation Report of the Independent Hearing Panel at [3.253]

⁸ Recommendation Report of the Independent Hearing Panel at [3.258]

⁹ Recommendation Report of the Independent Hearing Panel at [3.260]

¹⁰ Recommendation Report of the Independent Hearing Panel at [3.261]

Ngāti Turanga submission raises three points:

1. *Tangata whenua ability to participate in resource management and decision-making processes under the RMA was limited,*¹¹
2. *Evaluation reports are insufficient to assess the effects of the change on the cultural and natural environment, and are based on improper assumptions,*¹²
3. *The proposed changes are contrary to National and Regional policy direction and best practice.*¹³

Ngāti Turanga repeats the information in its submission regarding the adequacy of information relied upon in the section 32 evaluations.¹⁴

Ngāti Turanga agree with the Panel¹⁵ that the assessment of cultural costs and cultural benefits in the section 32 was undertaken by a person without expertise in matters of Mātauranga Māori.

Ngāti Turanga disagree with the Panel¹⁶ regarding Plan Change 2 having ‘very narrow scope’, when considering the changes the Panel made with regard to the ‘alternative consenting pathway’.¹⁷ Ngāti Turanga says that its recommended amendments are within the ambit of matters raised in submissions and or are a foreseeable consequence of relief sought in submissions; including the addition of Manawatū surface water management sub-zones into Table 14.1.¹⁸ Considering that the Council purports that Plan Change 2 has very narrow scope, Ngāti Turanga says that:

- The scope of Plan Change 2 does not warrant the wholesale changes to the One Plan provisions for existing farms, reflected in the Decision, and
- The Panel has found sufficient scope to amend the plan change in numerous ways which benefits primary industries where that has been sought.

At Panels’ Recommendation Report [3.261] direction¹⁹ from the Environment Court is from March 2017. Those declarations made by the Court in 2017 do not direct or infer that Council to amend the One Plan including in the manner set out by Plan Change 2. This decision from

¹¹ Ngāti Turanga submission from [16]

¹² Ngāti Turanga submission from [22]

¹³ Ngāti Turanga submission from [28]

¹⁴ Ngāti Turanga submission at [22], [24], and [25]

¹⁵ Recommendation Report of the Independent Hearing Panel at [3.255]

¹⁶ Recommendation Report of the Independent Hearing Panel at [3.257], [3.123]

¹⁷ Recommendation Report of the Independent Hearing Panel at [3.239]

¹⁸ Recommendation Report of the Independent Hearing Panel at page 113

¹⁹ Wellington Fish and Game Council and Environmental Defence Society v Manawatū-Whanganui Regional Council (21 March 2017) ENV-2016-WLG-000038

the Panel to progress has come at the cost of excluding tangata whenua from a decision making process over their ancestral lands and waters. This was not directed by the Environment Court as purported by the Panel.²⁰

Ngāti Turanga repeats the information in its submission regarding improper baseline.²¹ Foster adopts this same improper baseline when considering RPS Objective 1,²² the reporting officer presents a view *'that abandonment of PC2 and strict adherence to Table 14.2 will yield the greater cultural benefits'*,²³ but *'notwithstanding that the lack of compliance means that the water quality benefits and enhancement are not actually being realised'. The benefits are theoretical but not actually being achieved'*.²⁴ The Panel made an error by adopting this baseline, rather than applying a correct baseline (implementation of the operative One Plan) as per section 84 of the RMA 1991.

Figure 1: excerpt from Ms Foster's s 42A report showing how the inappropriate baseline has been integrated into the evaluation of RPS Objective 2-1.

Evaluation Consideration:	Proposed Amendments to PC2:	PC2:	'Status Quo' Operative One Plan (with all remaining unconsented IFLU adhering strictly to Table 14.2)
Will it assist exercise of s. 30 functions?	Yes – with a higher degree of certainty about the scope of N leaching that will be authorised by consent and by enabling regulation of IFLU and enforcement of the One Plan.	Yes – with a higher degree of certainty about the scope of N leaching that will be authorised by consent and by enabling regulation of IFLU and enforcement of the One Plan.	In theory 'yes' – in practice 'not at all'.
One Plan Objective 2-1 (implications for mauri, kaitiakitanga):	The submissions suggest there will be adverse effects for mauri but the consenting pathways require N leaching loss reduction which, cumulatively, must contribute to water quality improvement (Ton Snelder, Abby Matthews). This could be seen as supporting mauri and other cultural values – however the likely in-river difference is unlikely to be discernible.	The submissions suggest there will be adverse effects for mauri but the consenting pathways require N leaching loss reduction which, cumulatively, must contribute to water quality improvement (Ton Snelder, Abby Matthews). This could be seen as supporting mauri and other cultural values – however the likely in-river difference is unlikely to be discernible.	The submissions suggest this option will protect mauri (notwithstanding that the lack of compliance means that the water quality benefits and enhancement are not actually being realised). The benefits are theoretical but not actually being achieved.

Cultural benefits for tangata whenua:	The submissions suggest no benefits are derived; although water quality modelling does show marginal improvements in N loads, with resultant benefits to water quality/journey towards Schedule B values.	The submissions suggest no benefits are derived, although the water quality modelling does show marginal improvements in N loads, with resultant benefits to water quality/journey towards Schedule B values.	The submissions suggest that abandonment of PC2 and strict adherence to Table 14.2 will yield the greater cultural benefits (notwithstanding that this option does not completely resolve water quality degradation).
Cultural disbenefits for tangata whenua:	The submissions suggest that any consent pathway for N leaching loss creates cultural disbenefits to the extent that the regulatory framework does not completely resolve water quality degradation.	The submissions suggest that any consent pathway for N leaching loss creates cultural disbenefits to the extent that the regulatory framework does not completely resolve water quality degradation.	The submissions suggest that adherence to Table 14.2 has the least cultural disbenefits (notwithstanding that it does not completely resolve water quality degradation).

Ngāti Turanga says that the decision of the Panel to close the hearing and release its recommendations with the evidence it had before it constitutes a failure to carry out the necessary evaluation; that is, Ngāti Turanga is making a claim under section 32A RMA (1991)

²⁰ Recommendation Report of the Independent Hearing Panel at [3.261]

²¹ Ngāti Turanga submission at [23] and [27]

²² Christine Foster section 42A report (4 September 2020), Page 282

²³ Christine Foster section 42A report (4 September 2020), Page 281

²⁴ Christine Foster section 42A report (4 September 2020), Page 282

that the Panel has not undertaken or regarded evaluations to the extent necessary.²⁵ The joint witness statement of experts (iwi values) set out these deficiencies before the hearing closed.

Heading 1.2: Appeal point 2 – impacts on Māori values including Māori freshwater values (section 6(e) RMA 1991)

The Panel made an error²⁶ that a reduction of N-leaching contamination of waterways ‘must’ have a derived beneficial impact for ‘all’ aspects of the mauri of water in rivers and lakes and the coastal environment. The council officer and the hearing panel are not qualified to make the assessment, and were not provided with evidence on that matter. That assertion is incorrect in accordance with Ngāti Turanga tikanga.

NPSFM 2020 defines *Māori freshwater values* as the *compulsory value of mahinga kai and any other value (whether or not identified in [NPSFM] Appendix 1A or 1B) identified for a particular FMU or part of an FMU through collaboration between tangata whenua and the relevant regional council.*

Ngāti Turanga and Manawatū-Whanganui Regional Council have not yet defined these Māori freshwater values for the Manawatū freshwater management unit (FMU). Despite this process not being concluded, the compulsory value of mahinga kai remains in effect.

Under the One Plan strategy for surface water quality, one of the zone-wide compulsory management values is *mauri*. Regional Policy Statement Objective 5-1 and Policy 5-1 set out that ‘*The mauri* of the water body^ and its bed^ is maintained or enhanced*’. This was set out for the Panel in the joint witness statement of experts (iwi values) at issue 11.

Ngāti Turanga invests heavily into progressing these planning korero beyond discussions of *mauri* and *kaitiakitanga* into a deeper understanding of Te Ao Māori and Ngāti Turanga tikanga.²⁷ On this basis, Ngāti Turanga uses the following concepts to assess the wellbeing and health of freshwater ecosystems within its rohe and states that consideration of these kawa are notably absent from the Plan Change 2 evaluations.

- Whakapapa Atua, and Whakapapa Tupuna – Each hapū and iwi whakapapa to the whenua which is an inalienable association to all elements: mountains, rivers, lakes, swamps, forests, geothermal activity, oceans, animals – as well as tangata (people).

²⁵ Recommendation Report of the Independent Hearing Panel at [3.262], [3.10]

²⁶ Recommendation Report of the Independent Hearing Panel at [3.255(a)]

²⁷ Joint witness statement of experts iwi values (28 August 2020) at issue 1

- Te Kai Pupuru Mouri – Hapū and iwi are the Kai Pupuru Mouri of their taonga, both tangible and in-tangible. Hapū and iwi are integrated, sustainably across the options through a procedural standard that ensure options whāngai the mauri
- Hapai O – Level of resource abundance are achieved for hapū and iwi including but not limited to mahinga kai and wai tapu
- Manawaroa – Resilience: addressing resource loss and imbalances through time
- He ringa miti tai heke – Spiritual, customary and recreational uses of te taiao
- Ma Maru – Leave an offering for maru: ensuring that waterways remain within catchment, mining of natural capital, natural hazards

Ngāti Turanga says that by making the decision to adopt Panels' recommendations, the Manawatū-Whanganui Regional Council has not recognised and provided for as a matter of national importance the relationship of Ngāti Turanga as Māori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga. This was set out for the Panel in the joint witness statement of experts (iwi values) at issue 8.

That is, that Plan Change 2 is contrary to Section 6(e) of the Resource Management Act 1991.

Heading 1.3: Appeal point 3 – Plan Change 2 is an interim measure

Ngāti Turanga says that the Panel has made an error in considering Plan Change 2 as an interim, and says that the Resource Management Act (1991) does not provide for plan changes in any different manner whether they are to provide a temporary 'patch' or a longer standing policy. That is, plan change must meet the same tests²⁸ whether the policy is intended to be temporary or long-lasting.

The Panel made an error²⁹ by looking to the future and failing to consider the submissions and evidence before it. The Panel says '*we would encourage the parties to focus their energy towards that direction*' which is an error as it fails to consider the task before the Panel.³⁰

²⁸ sections 55, 61, and 66 RMA 1991

²⁹ Recommendation Report of the Independent Hearing Panel at [3.262]

³⁰ Recommendation Report of the Independent Hearing Panel at [3.262]

Ngāti Turanga disagrees with the Panel and says that Plan Change 2 will ‘create legacy issues’ and will frustrate the Council from giving effect to the NPS-FM 2020 via a wider, programmed plan review process before 2025,³¹ for the reasons set out below.

Sub-heading 1.3.1: reliance on future processes such as freshwater planning process and NOF

The Panel focuses on future plan making while disregarding iwi in current plan process.³²

The Panel says that a ‘comprehensive understanding of cultural health indices and assessment of cultural values, will be at the forefront of any planning and process for a NPS-FM 2020 compliant plan’³³ however appears to not apply that same standard to its own recommendations.³⁴

Reliance on NPSFM 2020 for iwi engagement.³⁵ This reliance on later processes was also obviously from the korero at the Council Strategy and Policy Committee held on 13 April 2021 when the decision to adopt Plan Change 2 was made.

Sub-heading 1.3.2: Direction of travel

Ngāti Turanga accepts that Plan Change 2 does not give full effect to the NPS-FM (2020) but says that is not sufficient reason to depart from the appropriate ‘direction of travel’ which would be required to achieve the December 2024 target set to publicly notify the freshwater planning instrument.

Ngāti Turanga says that the Panel made an error³⁶ that Plan Change 2 ‘will not create any undesirable legacy and therefore will not frustrate or undermine the Council’s ability to give effect to the NPS-FM 2020’.

Considering the Panels views,³⁷ Ngāti Turanga remain unconvinced that subsequence change or replacement of the One Plan with a freshwater planning instrument would any better reflect their tikanga and kawa, compared to Plan Change 2.

[3.260] *Furthermore the Council points to some considerable reliance or focus on a bigger future process - that being the NPSFM 2020 process - to be a pathway to potentially achieve the aspirations of iwi and hapū of the region. [The Panel] consider that while this process is*

³¹ Recommendation Report of the Independent Hearing Panel at [3.273], [3.173]

³² Recommendation Report of the Independent Hearing Panel at [3.257] and [3.260]

³³ Recommendation Report of the Independent Hearing Panel at [3.262]

³⁴ as evidenced at Recommendation Report of the Independent Hearing Panel [3.263] and [3.256]

³⁵ Recommendation Report of the Independent Hearing Panel at [3.255(b)]

³⁶ Recommendation Report of the Independent Hearing Panel at [3.123] and again at [3.273]

³⁷ expressed in Recommendation Report of the Independent Hearing Panel at [3.258]

inevitable it should not be at the expense of any current and / or ongoing component of fresh water management given the primacy of Te Mana o te Wai in the NPSFM 2020.

On this basis, Ngāti Turanga says that:

- The precedent set by Plan Change 2 and the subsequent granting of multiple intensive farming land use consents will create a legacy effect and will frustrate the Council's ability to implement freshwater planning instruments over the period 2025-2035
- Plan Change 2 takes local policy in the wrong direction, that is, in a direction that diverges from the NPS for Freshwater Management 2020
- The legacy set by Plan Change 2 will essentially require the Council to travel 'back to the future' in the period 2025-35 to make the necessary level of water quality improvements. This is an opportunity to remedy this here.
- In order for Ngāti Turanga to be involved in future decision-making processes (including the freshwater planning process) would require Council and Ngāti Turanga to work together in a manner with a sudden sense of discipline that has not been observed in the history of the relationship, including in Plan Change 2.

To that end, Ngāti Turanga remain unconvinced that such a relationship is able of being achieved when considering the status quo, which is captured by the Panel;³⁸ a summary of which is:

- *the absence of a specialist cultural values assessment at this stage does not materially impair the determination of Plan Change 2,*³⁹
- *Council points to some considerable reliance or focus on a bigger future process - that being the NPSFM 2020 process - to be a pathway to potentially achieve the aspirations of iwi and hapū of the region,*⁴⁰
- *there is nothing we can do to rectify the consultation approach that the Council undertook in respect to Plan Change 2,*⁴¹
- *Looking to the future, we would expect that issues such as the nature and timing of consultation to allow for meaningful engagement underpinned by the principles of the Treaty of Waitangi (Te Tiriti o Waitangi)... the collective challenge for Council and iwi in terms of the 2024 goal set by the NPS 2020 and we would encourage the parties to focus their energy towards that direction.*⁴²

³⁸ Recommendation Report of the Independent Hearing Panel at [3.258] – [3.262]

³⁹ Recommendation Report of the Independent Hearing Panel at [3.258]

⁴⁰ Recommendation Report of the Independent Hearing Panel at [3.260]

⁴¹ Recommendation Report of the Independent Hearing Panel at [3.261]

⁴² Recommendation Report of the Independent Hearing Panel at [3.262]

This was set out for the Panel in the joint witness statement of experts (iwi values) at issue 2.

Sub-heading 1.3.3: Return to the status quo

The Panel states⁴³ that Plan Change 2 *‘provides an interim ‘fix’ to a presently insoluble consenting paradox that will allow the Council and the community to move forward while achieving some environmental gains’*.

On that basis, Ngāti Turanga says that Plan Change 2 effectively seek to return to and retain the status quo. That is, a regulatory environment where the status quo which has led to degradation of te mana o te wai in the Manawatū River catchment and exclusion of Ngāti Turanga from decision making regarding whenua, awa and other taonga to which they whakapapa.

In a situation where it is expected water quality gains are to be ‘modest’⁴⁴ or ‘marginal’⁴⁵, Ngāti Turanga says that to return to and maintain such a status quo is contrary to recent changes to the NPS for Freshwater Management (2020), as well as Sections 8 and 55 of the RMA 1991.⁴⁶

Heading 1.4: Appeal point 4 – Consistency with NPS for Freshwater Management 2017 and 2020 (under sections 61, 66 RMA 1991)

Plan Change 2 has a clear focus on Council’s desire to grant resource (land use) consent to intensive farming activities and this is evidenced as far back as the s 32 evaluations. Following the 2017 Environment Court declarations, the Council made little attempt to implement the operative regional plan provisions and instigated a plan change process.⁴⁷

At the time of notification of Plan Change 2, the relevant national policy statement was the NPS for Freshwater Management 2014 (amended 2017) i.e., the NPSFM 2017. The NPS for Freshwater Management 2020 came into force on 7 September 2020; and the hearing for Plan Change 2 was held in October 2020. Meaning that Plan Change 2 was prepared at a time when the NPSFM 2017 was in force but Plan Change 2 was later heard at a time when the relevant NPS was updated to be the 2020 version.

Heading 1.4.1: NPSFM 2017 Objective D

⁴³ Recommendation Report of the Independent Hearing Panel at [3.122]

⁴⁴ Recommendation Report of the Independent Hearing Panel at [3.122]

⁴⁵ Recommendation Report of the Independent Hearing Panel at [3.257]

⁴⁶ Section 8 of the RMA (1991) requires that the principles of the Te Tiriti o Waitangi are *taken into account*, and section 55 requires that local authorities recognise and amend local planning documents in order to *give effect to* national policy statements

⁴⁷ Section 35 report (Hill Young Cooper, 2017)

At the time of notification, NPSFM 2017 Objective D was relevant to the plan change. Objective D provided for the involvement of iwi and hapū, and to ensure that tangata whenua values and interests are identified and reflected in the management of fresh water including associated ecosystems, and decision-making regarding freshwater planning. Ngāti Turanga repeats the material in its submission⁴⁸ that Plan Change 2 does not reflect the values and interests of tangata whenua, and the Panel has effectively precluded hapū from decision-making. Ngāti Turanga says that Plan Change 2 as notified was contrary to NPSFM 2017 Objective D.

Heading 1.4.2: NPSFM 2020 Objective 1

The NPSFM 2020 introduced one, new Objective 1 as follows:

2.1 Objective

- (1) The objective of this National Policy Statement is to ensure that natural and physical resources are managed in a way that prioritises:
 - (a) first, the health and well-being of water bodies and freshwater ecosystems
 - (b) second, the health needs of people (such as drinking water)
 - (c) third, the ability of people and communities to provide for their social, economic, and cultural well-being, now and in the future.

The Panel made an error by finding that *'Plan Change 2 is not inconsistent with Objective 1 of the NPS-FM 2020'*.⁴⁹ Ngāti Turanga says that the objective of Plan Change 2 places the economic needs of the community above the health and well-being of freshwater ecosystems which is not in accordance with the hierarchy set by Objective 1. This was set out for the Panel in the joint witness statement of experts (iwi values) at issue 9.

The Objective of PC2 is to *'improve the workability of the provisions for intensive farming land use provisions by updating the nitrogen leaching maximums and providing a viable consenting pathway for activities that do not comply with them, in order to enable a return to effective regulation of existing intensive farming land uses through the One Plan as soon as practicable'*.

Ngāti Turanga says that:

- The objective of PC2 (quoted above) do not warrant the wholesale changes to the One Plan provisions for existing farms, reflected in the Decision.
- Plan Change 2 (decisions version) is contrary to NPSFM 2020 Objective 1.

⁴⁸ Ngāti Turanga submission at [24], [30]

⁴⁹ Recommendation Report of the Independent Hearing Panel at [3.272]

Heading 1.4.3: NPSFM 2020 te mana o te wai

The cumulative nitrogen leaching limits set in Plan Change 2 (decisions version) were derived without consideration of te mana o te wai (TMOTW). This was set out for the Panel in the joint witness statement of experts (iwi values) at issue 9.

The modelled scenarios⁵⁰ do not consider TMOTW and Ngāti Turanga says that if TMOTW were modelled into those scenarios the differences would not be 'marginal' or 'modest'. This is, best indicated by the modelling of 'natural state' in those models. That is not to say that the objective of Plan Change 2 is to achieve natural state water quality in the coastal Manawatū, but that modelled scenario does go some way towards demonstrating how deeply TMOTW is degraded in that catchment.

The Panel has erred in two ways:⁵¹

- Firstly, by inferring that TMOTW is able to be delayed to another point in time and not having primacy in Plan Change 2, and
- Secondly the Panel and counsel are not qualified or experienced to make the assertion on behalf of tangata whenua including Ngāti Turanga.

Heading 1.5: Appeal point 5 – Process (Schedule 1 RMA 1991)

Schedule 1 of the Resource Management Act (1991) affords Māori the right to be involved in decision making processes regarding natural and physical resources. These rights are reaffirmed in the Regional Policy Statement (One Plan) Objective 2-1 and Policy 2-1.

The reporting planner for Council (Ms C. Foster) confirmed that Objective 2-1 is a relevant matter for consideration in relation to Plan Change 2.⁵² The reporting planner then went on to provide an assessment of Objective 2-1 as part of the s 42A reporting,⁵³ and again later included Objective 2-1 in a supplementary report to the Panel.⁵⁴ The Panel has then adopted this material.

Ngāti Turanga says that the Panel has made two errors

- *that the Council has met its legal obligations in Schedule 1 to consult with iwi authorities,*⁵⁵

⁵⁰ Recommendation Report of the Independent Hearing Panel at [3.257]

⁵¹ Recommendation Report of the Independent Hearing Panel at [3.272]

⁵² Christine Foster section 42A report (4 September 2020) Page 277, bullet point 5

⁵³ Christine Foster section 42A report (4 September 2020) Page 282, tabulated assessment of Objective 2-1

⁵⁴ Christine Foster supplementary paper (22 October 2020), at [9] and Attachment A

⁵⁵ Recommendation Report of the Independent Hearing Panel at [3.253] and noting the Panels' remarks regarding the 'effectiveness of the nature and the timing of the consultation' with iwi/hapū.

- the Plan Change PC2 '*gives effect to or is consistent with relevant higher order policy instruments*' including RPS Objective 2-1.⁵⁶

The Panel made an error by concluding that the absence of Ngāti Turanga tikanga from the plan change did not '*materially impair*' the Panels determination of Plan Change 2 and is not '*sufficient cause to delay*' Plan Change 2.⁵⁷ This is contrary to section 8 RMA (1991) as it excludes Ngāti Turanga of their right of kāwanatanga.

The Panel made an error⁵⁸ that by deciding to progress to a decision in the absence of a specialist cultural values assessment came at the cost of excluding tangata whenua from the decision-making process.

The Panel made an error⁵⁹ by asserting that '*there is nothing we can do*' in relation to remedying the exclusion of Ngāti Turanga from the evaluative exercises. Ngāti Turanga says that the Panel could have used section 41C RMA 1991 to commission this work, and if necessary, this information could be protected under s 42 RMA 1991.

The joint witness statement of experts (iwi values) at issue 12 set out for the Panel how Council should engage with tangata whenua regarding Plan Change 2, as per Schedule 1 of the RMA (1991).

Ngāti Turanga repeats the timeline in its submission⁶⁰, regarding the limited opportunity given by Council to consider and provide feedback on the proposed plan change. Ngāti Turanga stresses the conclusions reached of its submission⁶¹ regarding the decision of Council to notify the plan change in a demonstrated vacuum of information. The Panel erred⁶² that the first schedule process was 'met' by council and again⁶³ that there was nothing able to be done by the Panel to remedy this.

Ngāti Turanga says that this situation breaches procedural fairness and natural justice.

⁵⁶ Recommendation Report of the Independent Hearing Panel at [3.275], [3.276]

⁵⁷ Recommendation Report of the Independent Hearing Panel at [3.258] also see [3.259]

⁵⁸ Recommendation Report of the Independent Hearing Panel at [3.263]

⁵⁹ Recommendation Report of the Independent Hearing Panel at [3.261]

⁶⁰ Ngāti Turanga submission at [18]

⁶¹ Ngāti Turanga submission at [18(h)]

⁶² Recommendation Report of the Independent Hearing Panel at [3.253]

⁶³ Recommendation Report of the Independent Hearing Panel at [3.261]

Heading 2: The specific provision that the decision relates to and the relief sought

Primary relief is that:

1. Plan Change 2 (decisions version) be refused except for:
 - a. The recalibration of CMLN in Table 14.2, and
 - b. The transitional pathway to deintensification in Policy 14-6(d)(ii)

which are retained.

And also

2. That all subzones of the Coastal Manawatū surface water management zone (Mana_13) are added to One Plan Table 14.1 (targeted water management sub-zones), including and limited to:
 - a. Coastal Manawatu sub-zone (Mana_13a)
 - b. Upper Tokomaru sub-zone (Mana_13b)
 - c. Lower Tokomaru sub-zone (Mana_13c)
 - d. Mangaore sub-zone (Mana_13d)
 - e. Koputaroa sub-zone (Mana_13e)
 - f. Foxton Loop sub-zone (Mana_13f)

In the instance that primary relief is refused, then secondary relief is such further or other relief as the Court considers appropriate or is otherwise consequential on the relief generally sought within this appeal and may address the concerns expressed in the submission, or reasons for the appeal, otherwise raised.

Appendices:

1. Appeal details:
 - i. Parts of the decision to which the appeal relates, and
 - ii. Reasons for the appeal, and
 - iii. Relief sought.
2. Council section 32 report as notified
3. Ngāti Turanga submission as filed 21 October 2020
4. Summary of submissions and decisions requested. Proposed plan change 2 (18 November 2019) 104 pg
5. Council section 42A report (planning) 4 September 2020 and supplementary 42A report (planning) 8 October 2020
6. Response to issues arising in oral evidence and questions at the hearing by section 42A report author (Christine Foster) on behalf of Manawatū-Whanganui Regional Council 22 October 2020
7. Joint witness statements:
 - i. RMA planning 29 July and 20 August 2020
 - ii. joint witness statement of experts iwi values 28 August 2020
8. Recommendation Report of the Independent Hearing Panel 19 March 2021 and public notice 21 April 2021
9. 2017 Environment Court declarations (*Fish and Game v Manawatū-Whanganui Regional Council*)
10. A list of the names and addresses of persons to be served with a copy of this notice.