BEFORE THE ROTORUA DISTRICT COUNCIL HEARINGS COMMITTEE

IN THE MATTER	of the Resource Management Act 1991
AND	
IN THE MATTER	of a submission made by the **Bay of Plenty Regional Council** on Proposed Plan Change 3 Significant Natural Areas (SNAs) to Appendix 2 (Natural Heritage) of Te Mahere Mātua o Rotorua (Rotorua Lakes District Plan).

STATEMENT OF POSITION BY NASSAH JOHN STEED

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1 Introduction

1.1 My name is Nassah Steed. I am a Principal Advisor at Bay of Plenty Regional Council (BOPRC). I have a Bachelor of Planning degree from the University of Auckland.

1.2 I have 22 years' experience in local and regional government resource management practice. I currently manage the Bay of Plenty Regional Policy Statement (RPS) programme including changes, monitoring, implementation and statutory acknowledgements. Part of my role involves contributing RPS related input to district plan changes and resource consent applications lodged with the region's territorial authorities.

1.3 In preparing this statement, I confirm I have read the:

1 s.32 report;

2 s.42a Planners report; and

3 Relevant submissions to the sites BOPRC submitted on.

1.4 My statement of position will address the following matters:

1 Bay of Plenty Regional Policy Statement;

2 Proposed National Policy Statement for Indigenous Biodiversity

3 Te Mana o Te Wai: Proposed National Policy Statement for Freshwater and Proposed National Environmental Standard for Freshwater Management

4 National Environmental Standards for Plantation Forestry (2017)

5 Response to Staff recommendations; and

6 Conclusion.

2 Bay of Plenty Regional Policy Statement

2.1 BOPRC recognises the importance of Proposed Plan Change 3 (PC3) in seeking to ensure the Rotorua District Plan identifies and maps Significant Natural Areas (SNAs). The protection of SNAs is a matter of national importance under section 6(c) of the Resource Management Act 1991 (RMA) and is strongly supported by BOPRC.

2.2 BOPRC recognise the benefits of private covenants (e.g. QE II and Ngā Whenua Rāhui Kawenata) as a method of prohibiting particular activities and accessing funding for on-going management activities including fencing, planting and pest control. However, private covenants are focused on enhancing biodiversity values within areas and, do not provide for 'buffer' protection of covenanted areas via district plan rules from the effects of subdivision, use and development.

2.3 The RPS directs district plans assess and identify SNAs, using criteria consistent with those contained in Appendix F Set 3 'Indigenous vegetation and habitats of indigenous fauna'. This requirement is set out in Policies MN 1B *'Recognise and provide for matters of national importance'* and MN 2B *'Giving particular consideration to protect significant indigenous habitats and ecosystems'* and MN 3B *'Using criteria to assess values and relationships in regard to section 6 of the Act'*. Also of relevance is Policy MN 4B *'Encouraging ecological restoration'*.

2.4 District plans are required to give effect to these RPS provisions, or in other words, actively implement the direction given in Policies MN 1B, MN 2B and MN 3B above. BOPRC's submission seeks to ensure the PC3 gives effect to the RPS in accordance with section 73(4) of the RMA.

2.5 District Plans play a crucial role in addressing potential effects on SNAs arising from subdivision, use and development. District Councils functions and responsibilities under the RMA include managing subdivision, use and development. It is primarily through inappropriate subdivision, land use change and activities that adverse impacts arise on SNAs.

2.6 The earlier mentioned RPS Matters of National Importance policies and other relevant RPS Iwi Resource Management policies are set out in full in **Appendix 1** to this Statement of Position.

2.7 Specific commentary is made in relation to the RPS Iwi Resource Management policies later in this statement in relation to specific and potential SNAs on CNI Treaty Settlement lands and multiple owned Māori land.

2.8 I acknowledge there is an inherent tension between various RPS policies seeking protection of SNAs and recognising the Treaty of Waitangi in the exercise of functions and powers under the Act (e.g. RPS Policies IW 2B and IW 3B) and adverse effects on matters of significance to Māori (i.e. RPS Policy IW 5B). Policy tensions are not uncommon and need to be weighted and balanced accordingly by decision makers.

2.9 SNAs are an RMA planning tool to provide protection status for sites of significant indigenous biodiversity value in the context of a national decline of indigenous biodiversity. In my view, SNAs should be consistently applied where a site meets the relevant indigenous biodiversity criteria set out in RPS Appendix F Set 3.

2.10 The RPS acknowledges special areas (including SNAs) on private land are particularly at risk from the effects of development[1] and that cumulative degradation is not recognised and difficult to identify[2].

2.11 RPS Policy MN 2B *'Giving particular consideration to protecting significant indigenous habitats and ecosystems'* is a specific policy response to the issue of diminishing biodiversity in the region. It recognises that in order to achieve the protection of significant indigenous biodiversity it is necessary to exercise control over activities that may adversely affect them.

2.12 BOPRC supported the Proposed Rotorua District Plan objectives, policies, rules and other provisions relating to SNAs and was a party to related appeals on these provisions when the

[1] Pg. 71, part 2.7.1.2

[2] Pg. 71, part 2.7.1.3

plan was going through the Schedule 1 process in 2015. As part of the suite of consent orders BOPRC signed up to, a commitment was made to review the schedule of SNAs which culminated in PC3.

2.13 While the use of alternative protection mechanisms (i.e. consent notices, kawenata etc) are useful to supplement the protection afforded by SNAs to areas that meet the relevant criteria in Appendix F Set 6 of the RPS, I do not consider they provide for fulsome protection in themselves. The explanation provided under Policy MN 4B reflect this where it states;

> *'a range of complementary tools are needed to ensure that the intrinsic values and processes of ecosystem are safeguarded and might include education, the purchase of land for reserves, buffers to adjacent land uses and the acquisition of land through reserves contributions...water conservation order, covenants and other voluntary agreements are also valid tools.'*

2.14 In my view, while alternative methods (i.e. section 221 consent notices, Ngā Whenua Rāhui and Forestry Covenants) are valid tools to protect significant indigenous habitats and vegetation, the scheduling of sites as SNAs in district plans is the most appropriate protection mechanism in a resource management context for the following reasons:

(i) SNAs as a s.6 matter of national importance are afforded greater weight in decision making than 'lower' order provisions in district plans;

(ii) SNA are reinforced by policy provisions that provide clear direction for resource management decision making when considering potential effects of subdivision, land use and development on significant indigenous biodiversity;

(iii) SNA schedules have a comprehensive and quality information base that can be used in a variety of Council decision making processes and for monitoring purposes;

(iv) SNA schedules that have gone through a Schedule 1 process are more likely to attract non-regulatory financial as well as other incentives to assist landowners with ongoing protection efforts;

(v) District Plan SNA rules apply to activities affecting SNAs whether or not they occur within site boundaries, whereas protected areas/covenants/kawenata only apply to activities within site boundaries. This is important to protect sites from effects such as

nutrient and sediment discharges, noise and light pollution, removal of buffer vegetation etc.

(vi) SNAs better ensure landowners are aware of areas of significant vegetation and habitats of threatened species exist on their land, and that:

a. the necessary assessment of environmental effects are undertaken when a landowner wishes to undertake activities which may impact on these areas; and

b. appropriate conditions are imposed on consents for activities with potential to impact on these.

(vii) Once in place, SNAs provide more robust long term protection from the effects of subdivision, use and development than other non-RMA tools. They can only be varied or cancelled via a Schedule 1 process which is generally more rigorous than the resource consent process and supported by robust ecological assessments to justify why their protection is no longer necessary.

(viii) Covenants vary in their effectiveness as long term protection mechanisms. Depending on the form of covenant their terms and conditions can very according to the landowner or leaseholder's preferences. There is no guarantee that terms and conditions afford the same level of protection afford the same level of protection as district plan SNA provisions. In addition Ngā Whenua Rāhui have a finite period of 25 years protection. Section 221 notices can be cancelled or varied and BOPRC have observed examples including to indigenous biodiversity areas to enable further subdivision and development.

(ix) It is possible for TAs/DOC to permit commercial activities (including mining) in some types of reserves/protected areas (e.g. stewardship land) and these activities should be subject to the same rules and consideration/mitigation of effects as activities occurring on private land[3]. SNAs should also apply to reserves/protected areas/covenants and kawenata so that protection through district plan rules is not lost if the land becomes freehold through treaty settlement, or through being sold or swapped or if kawenata expire;

[3] Note RMA Section 4(3) provides that district councils land use controls do not apply on conservation land where an activity is consistent with a conservation management strategy and does not have significant adverse effects beyond the boundary.

(x) QEII covenants/kawenata can permit the building of walking and cycling tracks, huts and other amenities. Agencies responsible for protected area covenants/kawenata often have insufficient resources to undertake compliance monitoring nor take legal action in the event of breaches; and

(xi) Private covenants are focused on enhancing biodiversity values within areas and, do not provide for 'buffer' protection of covenanted areas via district plan rules from the effects of subdivision, use and development.

2.14 BOPRC seeks to avoid a piecemeal approach to the District Plan SNA layer. Our preference is to ensure that the full extent of the SNAs are mapped across the District, to ensure there is a robust repository of all SNAs allowing for the completeness of the layer and provides for robust protection from the effects of land use types so that fragmented parcels can be linked together[4] overtime.

2.15 The identification of SNAs is part of the on-going plan making process and can involve considerable resources, time and effort. As a result, the process of scheduling is often 'delayed' and does not occur at the same time district plans are formulated. However, I do not consider that this stage of plan making is an opportunity to revisit the appropriateness of RMA methods to achieve RMA objectives i.e. the protection of areas of significant natural biodiversity.

2.16 This is because, SNAs are a deliberate higher order planning RMA response (i.e. an s.6 matter of national importance) to intervene in RMA decision making process to protect dwindling national biodiversity.

2.17 A number of potential SNAs also comprise wetlands and/or are situated along the margins of lakes and rivers. The preservation of the natural character of these areas and the protection of them from inappropriate subdivision, use and development is also a matter of national importance under section 6(a) of the RMA.

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[4] Rotorua District Plan Objective 2.3.5
'A network of healthy functioning areas of significant indigenous vegetation and significant habitats of indigenous fauna with a high degree of ecological integrity, intactness, interconnectivity, and cohesiveness.'

3. Proposed National Policy Statement for Indigenous Biodiversity (NPSIB)[5]

3.1 The NPSIB is currently open for consultation with submissions closing on 14 March 2020. It is anticipated that the NPS will be gazetted in mid-2020. BOPRC has prepared submission on the NPSIB. While the NPSIB doesn't have legal effect its direction provides a useful indication of what national direction will be provided with respect to SNAs and district plans.

3.2 The NPSIB purpose is to set out objectives and policies in relation to maintaining indigenous biodiversity and to specify what local authorities must do to achieve those objectives. Presently the NPSIB requires:

- Councils comprehensively identify and map SNAs (in accordance with prescribed criteria) in district plans;
- Councils to provide for certain activities and manage the protection of indigenous biodiversity through RMA plan and consent processes;
- The RPS to include targets for increasing indigenous vegetation in both rural and urban areas; and
- Regional Council to develop a Regional Biodiversity Strategy.

3.3 The NPSIB proposes not to regulate indigenous biodiversity in waterbodies and freshwater ecosystems except for provisions relating to restoration and enhancement.

3.4 With respect to the requirement to identify and map SNAs in district plans the NPSIB currently doesn't distinguish between public and private land (including multiple owned Māori land) but it does set out a process and principles for consultation with potentially affected landowners. Despite this potential economic impacts to Māori land owners are acknowledged in the supporting discussion document. The NPSIB also seeks to provide for greater involvement of Māori as kaitiaki in council activities involving protecting and managing SNAs.

3.5 BOPRC supports the overall intent of the NPSIB as New Zealand's indigenous biodiversity is continuing to decline and specific regional responses are required nationwide to better address this issue.

3.6 The NPSIB provides clear direction on identifying SNAs and an effects management hierachy for activities within them. It supports regional and district councils role in fulfilling biodiversity obligations under the RMA.

3.7 Although regional councils and territorial authorities have different responsibilities, all councils are bound by the common goal of achieving sustainable management of all natural resources.

4 Te Mana o Te Wai: Proposed National Policy Statement for Freshwater (NPS FM)[6] and National Environmental Standard for Freshwater Management (NESFM)

4.1 The NPSFM in so far as it relates to PC3, seeks to:

- achieve no further loss of wetlands;
- identify map and retain an inventory of wetlands; and
- restore natural inland wetlands.

4.2 The NESFM requires mapping of wetlands to manage effects of earthworks, vegetation and earth disturbance.

4.3 Neither the NESFM nor the NPSFM refer to SNAs.

5 National Environmental Standards for Plantation Forestry 2017 (NESPF)[7]

5.1 The NESPF provide nationally consistent regulations to manage the environmental effects of forestry. The NESPF objectives are to:

- Maintain or improve the environmental outcomes associated with plantation forestry activities; and
- Increase the efficiency and certainty of managing plantation forestry activities.

5.2 The NESPF objectives are achieved through a single set of regulations under the RMA that apply to foresters throughout New Zealand. The regulations are based on good forestry

[6] Proposals for consultation 2019
[7] Gazetted on 1 May 2018

practices. If forest operators can meet the NESPF permitted conditions, the activity is permitted. Conversely resource consent is required where conditions can't be met.

5.3 The NESPF is relevant to PC3 as some wetlands assessed as SNAs (e.g. Puhatoroa wetland (site 141) and Reservoir Road wetland (site 143)), but recommended by the reporting planner not to be scheduled as such in the district plan, are located in forestry areas.

5.4 The NESPF afford a greater degree of protection to wetlands that have been scheduled as SNAs within forestry areas. Of note, the higher level of protection for SNAs appropriately reflects the direction set out in s.6 of the RMA. Specific standards provide a degree of protection for certain activates within wetlands[8] (i.e. earthworks, vegetation removal, and use of fuels) within 10m of wetlands exceeding 0.25ha in area.

5.5 Of note, the NESPF also enables district or regional plans to have more stringent rules where the rule provides for the protection of SNAs[9].

6.0 Response to Staff recommendations

Peka Forest (Site 153), Ngatuku Road Wetlands (Site 578) & Whakarewarewa (Site 132)

6.1 BOPRC's submission sought Peka Forest (Site 153), Ngatuku Road Wetlands (Site 578) and Whakarewarewa (Site 132) be included in the schedule of SNAs unless they are assessed as not meeting the RPS significance criteria.

6.2 Wildlands were unable to conclusively determine the significance of the Peka Forest and Ngatuku Road Wetlands via a desktop study and subsequent request for site access was denied[10]. Consequently these sites were not included in notified PC3 and the Planner's recommendation they are outside the scope of PC3. Wetlands are identified as the most vulnerable of New Zealand's ecosystems. Wetlands are covered by National Priority 2 in the Priorities for Protecting Rare and Threatened Biodiversity on Private Land (MFE 2007). Wetlands have been reduced to less than 10% of their former extent in New Zealand and less than 8% in the Bay of Plenty region.

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[8] Standards to control earthworks within 10m of wetlands or SNAs larger than 2500m², fuelling and use oil of oil must not be stored within 10m of wetland. Further, forestry earthworks management plans and harvest plans must identify wetlands above 0.25m².

[9] s.6(2)

[10] Paragraph 5.381 Section 42A report.

6.3 Whakarewarewa was excluded from the scope of PC3 because ownership was being negotiated and it was not considered an appropriate time to consult on this site. Consequently Wildlands made no assessment against the RPS significance criteria yet BOPRC contend if assessed the site would have easily qualified as an SNA due to the well-known presence of geothermal vegetation and habitats.

6.4 Geothermal vegetation and habitats are a historically rare ecosystem type that has been heavily reduced in extent. For this reason it has been deemed a 'National Priority' for protection of biodiversity (DOC/MFE 2007) and classified as Critically Endangered 'Originally Rare Ecosystem (Holdaway et al 2012). Whilst BOPRC is disappointed with this approach we note the area is afforded a level of protection under the District Plan as the area is identified as an Outstanding Natural Feature and Landscape.

Pohaturoa Wetlands (Site 141) and Reservoir Road Wetlands (Site 143)[11]

6.5 The Planner's report recommends not scheduling the Pohaturoa (0.46ha) and Reservoir Road (2.53ha) wetlands as SNAs given the extent of existing covenants in place for the forest, including for wetlands, which would add complexity to the regulatory regime.

6.6 From the information provided in the PC3 reports and information it appears neither the Pohaturoa nor the Reservoir Road wetlands are currently protected by any form of private or forestry covenant. The reporting Planner is not recommending additional SNAs within Whakarewarewa Forest be scheduled in the District Plan given the extent of existing covenants and SNAs within Whakarewarewa Forest.

6.7 However, the Planner is recommending SNA amendments in respect to Poplar Venue Wetland (Site 142) which is already scheduled as an SNA in the district plan within Whakarewarewa Forest. The Planner's recommendation seeks to exclude areas within the existing Poplar Venue SNA that are subject to alternative legal protection (i.e. forestry covenant).

6.8 In the initial evaluation in the Planner's S42A report it highlights these wetlands are afforded a degree of protection under the Regional Natural Resources Plan (RNRP) and NESPF. Indeed, under the RNRP WL R9 (Rule 85) it is a discretionary activity to modify a wetland. This is consistent with the functions of Regional Council's under section 30(1)(ga) to

[11] CNI Iwi Land Management

establish, implement and review objectives, policies and methods for maintaining indigenous biodiversity.

6.9 In a similar vein, the protection of SNAs in district plans is wholly consistent with the functions of district councils under section 31(1)(b)(iii) to control any actual or potential effects of the use, development or protection of land for the purpose of maintaining indigenous biological diversity.

6.10 It is important to distinguish between the duplication of functions and the duplication of plan provisions or other methods to implement those functions. The duplication of *functions* between territorial and regional authorities is not unusual or unlawful. The management of natural hazards is another area where the RMA recognises that both authorities have a role to play.

6.11 However, the application of those functions differs. A regional council's functions are generally broader, applying at a regional scale. It has the general function of integrated management of the natural and physical resources of the region, whereas Rotorua Lakes Council's complimentary function relates to the resources of the district (see ss.30(1)(a) and 31(1)(a)).

6.12 Despite this the RPS advocates the consideration of opportunities to align interventions to achieve multiple objectives and respond to the nature and values of resources and the diversity of effects (including cumulative and reverse sensitivity effects) that can occur and regards these as positive effects[12].

6.13 It is also worth noting section 30(1)(ga) was introduced to the RMA in 2003 after RNRP WL R9 (Rule 85) was part of the then Regional Water and Land Plan. Its thrust was not to maintain the indigenous biological diversity values of wetlands but to recognise the vast majority of wetlands (approximately 8% remaining) in the region have been lost due to land development, and remain under threat from the direct and cumulative effects subdivision, use and development that occur incrementally via the consenting process.

6.14 I contend the inclusion of RNRP rules relating to the modification of wetlands does not, in itself, preclude Rotorua Lakes Council scheduling such wetlands in the district plan. Duplication may not be best practice, is inefficient and may lead to confusion. However in the case of SNAs the areas affected are clearly identified on district plan maps and for the purpose of protecting indigenous biological diversity.

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[12] RPS Policy IR 3B 'Adopting an integrated approach.'

6.15 Furthermore, BOPRC have identified fatal flaws with the enforceability and implementation of RNRP WL R9 (Rule 85) which is identified as requiring a plan change to rectify.

6.16 BOPRC considers, ordinarily, that sites which meet the RPS Set 6 Appendix F criteria should be scheduled in a district plan. BOPRC acknowledge CNI staff opposition to potential new SNAs on CNI lands which are the subject of ***recent*** treaty settlement and that an iwi resource management plan[13] has recently been prepared for the management of CNI lands.

6.17 RPS Policy IW 3B recognises the Treaty of Waitangi principles[14] and, that tangata whenua have rights protected by the Treaty that accords iwi a status distinct from that of interest groups and members of the public[15]. Policy IW 3B also provides for the right of each iwi to define their own preferences for the sustainable management of natural and physical resources where it is not inconsistent with the Act. RPS Method 41 promotes consultation with potentially affected tangata whenua early in a proposal's development and to continue consultation during implementation including in accordance with tikanga Māori.

6.18 In my view, the relevant Treaty principles (e.g. partnership, good faith, redress and active protection) should allow adequate time for the land owner to be properly consulted with and consider viable alternatives to the SNA process. CNI staff have made their concerns clear why they oppose SNAs on their lands. In this case, CNI have been afforded reasonable opportunity to be consulted and express any concerns relating to PC3.

6.19 The balance between protecting SNAs and recognising Māori culture and traditions is a key consideration for decision makers. The RPS policy direction is clear with respect to the identification and protection of SNAs. Where an SNA is identified by a suitably qualified ecologist using criteria consistent with those in RPS Appendix F these should be scheduled. The RPS makes no distinction between land tenure re: the identification and protection of SNAs in district plans.

6.20 The RPS approach is consistent with the proposed NPS Indigenous Biodiversity. The proposed NPS Indigenous Biodiversity also requires district councils assess and map SNAs in their district plans. Although the proposed NPS Indigenous Biodiversity is unlikely to be gazetted until mid-2020 it is helpful in providing context to what future likely national direction

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[13] He Mahere Putahitanga: A pan tribal Iwi Planning Document on behalf of the Central North Island Forest Iwi Collective

[14] Clause (a) and (b)

[15] Clause (d) and (e)

will be. If the Hearing Committee decides against including the Pohaturoa and Reservoir Road wetlands their inclusion can be reviewed at the time of the next plan review, considered alongside the gazetted version of the National Policy Statement for Indigenous Biodiversity.

6.21 On balance I consider scheduling Pohaturoa wetland and Reservoir Road wetland as SNAs in the district plan is the most appropriate means of achieving the purpose of PC3. The purpose of PC31 is set out in paragraph 2.4 of the S42A Planners report which is to give effect to the RPS requirements and Part 2 of the RMA relating to district plans identifying SNAs.

6.22 Neither wetland is currently provided alternative private protection in the form of existing or proposed covenants. Wetlands have been reduced to less than 10% of their former extent in the Bay of Plenty region. Under the Priorities for Protecting Rare and Threatened Biodiversity on Private Land (MfE 2007) wetlands are a National Priority 2 area.

6.23 Wildland Consultants (2017) recommended all existing wetlands in the Rotorua catchment be protected from development and drainage now. The protection should be formal and in perpetuity. These wetlands are already functioning to remove nitrogen from lake nutrient budgets; further reduction of these wetlands will increase the amount of nitrogen that needs to be removed from the lake by 'other' means. Only four lake edge wetlands currently have any legal protection status.

6.24 **Recommendation:** BOPRC recommend Puhatoroa wetland (Site 141) and Reservoir Road wetland (Site 143) are scheduled as SNAs.

Te Ngae Lake Edge Wetlands (Site 148)

6.25 The Planner's report recommends Te Ngae Lake Edge Wetlands are not included as part of Plan Change 3.

6.26 BOPRC's submission sought the inclusion of Te Ngae Lake Edge Wetland in the district plan schedule of SNAs on the basis it meets the RPS significance criteria. BOPRC's reasons supporting scheduling Te Ngae Lake Edge Wetlands as SNAs are consistent with its reasoning for scheduling Pohaturoa and Reservoir Road wetlands.

6.27 The Department of Conservation and Federated Farmers also support scheduling Te Ngae Lake Edge Wetlands as SNAs.

6.28 Te Ngae Lake Edge Wetland comprises 14.65ha of wetlands that qualifies for protection as matters of national importance under both Sections 6(a) and 6(c) of the RMA.

6.29 BOPRC have particular interest in ensuring the protection of the wetlands from a water quality perspective and consider Te Ngae Lake Edge Wetland should be included in the SNA schedule as a priority.

6.30 This wetland area plays an important role as a lake edge wetland, filtering nutrients from entering Lake Rotorua. As an existing wetland, its role is already accounted for in lake nutrient budgets. Given the location close to the lake, development pressure on this wetland should be considered high and this wetland complex should be included in the schedule to ensure the nutrient filtering values of the site are protected in the long-term.

6.31 As stated earlier Wildland Consultants (2017) made the recommendation that all existing wetlands in the Rotorua catchment should be protected from development and drainage now. The protection should be formal and in perpetuity. These wetlands are already functioning to remove N from lake nutrient budgets; further reduction of these wetlands will increase the amount of N that needs to be removed from the lake by 'other' means. Only four lake edge wetlands currently have any legal protection status.

6.32 Whilst I acknowledge water quality considerations are not the key focus of PC3 the effects of nutrient discharges on Rotorua Te Arawa Lakes is identified as a regionally significant water quality issue at section 2.9.3.2 of the RPS. I consider it worthwhile highlighting the RMA also provides for the management of aspects of indigenous biodiversity through the following sections:

- safeguarding the life-supporting capacity of air, water, soil and ecosystems (s5(2)(b)); and
- having regard to the intrinsic values of ecosystems (section 7(d)). In this case, intrinsic values include genetic and biological diversity (s 2(1)).

6.33 **Recommendation:** BOPRC recommend Te Ngae Lake Edge Wetlands (Site 148) are scheduled as SNAs.

7.0 Conclusion

7.1 The purpose of PC31 is to give effect to the RPS requirements and Part 2 of the RMA relating to district plans identifying and protecting SNAs. BOPRC seeks to ensure PC3 gives

effect to the RPS and schedules SNAs that Wildlands have assessed as meeting the RPS Appendix F Set 3 Indigenous Biodiversity criteria and to avoid a piecemeal approach to the District Plan SNA layer. BOPRC's preference is to ensure that the full extent of the SNAs are mapped across the District, to ensure there is a robust repository of all SNAs allowing for the completeness of the layer. Excluding sites from the SNAs maps and schedule because of land tenure, existing private protection mechanisms, or the existence of other SNAs in the vicinity, does not give effect to the RPS. Nor does it recognise and provide for these areas as a matter of national importance under section 6(c) and section 6(a) (in the case of wetlands).



Nassah Steed
Principal Advisor (Policy and Planning)

7 February 2020

Appendix 1: Relevant RPS provisions

Matters of National Importance Policies

Objective 20: The protection of significant indigenous habitats and ecosystems, having particular regard to their maintenance, restoration and intrinsic value

Policy MN 1B: Recognise and provide for matters of national importance

(a) Identify which natural and physical resources warrant recognition and provision for as matters of national importance under section 6 of the Act using criteria consistent with those contained in Appendix F of this Statement;

(b) Recognise and provide for the protection from inappropriate subdivision, use and development of those areas, places, features or values identified in accordance with (a) in terms of natural character, outstanding natural features and landscapes, and historic heritage;

(c) Recognise and provide for the protection of areas of significant indigenous vegetation and habitats of indigenous fauna identified in accordance with (a);

(d) Recognise and provide for enhancing and maintaining public access to and along those areas identified in accordance with (a);

(e) Recognise and provide for the relationship of Māori and their culture and traditions identified in accordance with (a) and Policy IW 2B; and

(f) Recognise and provide for protection to recognised customary activities.

Explanation

All persons exercising functions and powers under the Act are required to recognise and provide for, as matters of national importance:

1 The preservation of the natural character of the coastal environment (including the coastal marine area), wetlands and lakes and rivers and their margins, and the protection of them from inappropriate subdivision, use and development (section 6(a));

2 The protection of outstanding natural features and landscapes from inappropriate subdivision, use and development (section 6(b));

3 The protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna (section 6(c));The maintenance and enhancement of public access to and along the coastal marine area, lakes and rivers (section 6(d));

4 The relationship of Māori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga (refer section 6(e));

5 The protection of historic heritage from inappropriate subdivision, use and development (section 6(f)); and

6 The protection of recognised customary activities (section 6(g)).

For the region's matters of national importance to be sustainably managed, they need to be more reliably assessed. Criteria assist in their identification and evaluation. The criteria contained in Appendix F of this document support consistency at regional, city and district levels, and can avoid duplication.

Evaluation of matters of national importance may need to be undertaken by people who have specialist or technical knowledge, for example, archaeologists. When consistent criteria are applied specialists should reach a similar conclusion. In the event that the conclusions are different, decision makers must weigh the evidence. The involvement of a specialist does not predetermine a decision; decision makers must still exercise judgement.

The Appendix F criteria can be used to assist in identifying elements of the environment that may be so affected. An assessment is to be in such detail as corresponds with the scale and significance of the effects.

The criteria are to be used as a framework for assessment. They are not tests or standards that, by themselves, determine what protection is required. The criteria are to be applied in regional, city and district plans, and in case-by-case consents assessments.

Table reference: ***Objectives 18, 19, 20, 21 and 22,*** *Methods 1, 2, 3, 8, 11, 12, 41, 42, 46, 48, 64, 65 and 70*

Policy MN 2B: Giving particular consideration to protecting significant indigenous habitats and ecosystems

Based on the identification of significant indigenous habitats and ecosystems in accordance with Policy MN 1B:

(a) Recognise and promote awareness of the life-supporting capacity and the intrinsic values of ecosystems and the importance of protecting significant indigenous biodiversity;

(b) Ensure that intrinsic values of ecosystems are given particular regards to in resource management decisions and operations;

(c) Protect the diversity of the region's significant indigenous ecosystems, habitats and species including both representative and unique elements;

(d) Manage resources in a manner that will ensure recognition of, and provision for, significant indigenous habitats and ecosystems; and

(e) Recognise indigenous marine, lowland forest, freshwater, wetland and geothermal habitats and ecosystems, in particular, as being underrepresented in the reserves network of the Bay of Plenty.

Explanation

Sustainable management includes safeguarding the life-supporting capacity of ecosystems. The purpose of doing this is to maintain the well-being of the biosphere (i.e. the life-supporting capacity of air, water and soil). In order to achieve this it is necessary to maintain ecosystems, providing for their restoration and rehabilitation where appropriate. Such restoration will increase the survival probabilities of species, habitats and ecosystems.

It is the totality of ecosystems presently existing within the Bay of Plenty region that gives it its recognisable character and unique identity. This totality is not only comprised of all significant features and sites but includes remnants of indigenous vegetation and habitat. In order to preserve the regional identity it is important to protect as many of these remnants as possible. Such protection is also in accord with maintaining the well-being and health of the region's ecosystems. In order to achieve this protection it is necessary to exercise control over the activities that may adversely affect them. Efficient means of doing this are through the consent process and through councils ensuring that they integrate their resource management functions with ecological principles and considerations.

Production forestry can provide habitats for significant indigenous fauna. In these areas normal forestry operations should benefit from existing use rights and be able to continue. In such cases management efforts, including codes of practice, to provide for rare and endangered species are encouraged.

Pest plants and animals can adversely affect indigenous vegetation and habitat. The Regional Pest Management Plan addresses the management of pest species in the region and places requirements on landowners.

In order that the region's natural character and indigenous vegetation and habitats of indigenous fauna are sustainably managed for present and future generations, they need to be more reliably assessed. Policy MN 2B relies on the assessment and identification of natural character and significant indigenous habitats and ecosystems using the Appendix F criteria required by Policy MN 1B. The Appendix F criteria are tools that assist in the identification and evaluation of natural character and indigenous vegetation and habitats of indigenous fauna for the purpose of promoting their preservation and protection. Having criteria in the regional policy statement supports consistency in the assessment of section 6(a) and 6(c) matters, at regional, city and district levels, and can avoid duplication. Criteria can help agencies identify the range of values that make up our natural character and indigenous vegetation and habitats of indigenous fauna, the threats to them, and options for management.

Criteria can focus attention on the qualities of an area's natural character and the factors that make particular areas of indigenous vegetation and habitats of indigenous fauna significant, raise people's awareness of their importance to the community, and help people understand more about themselves, their origins and their environment.

*Table reference: **Objectives 20, 32** and **33**, Methods 3, 26, 27, 39, 49, 55, 64 and 65*

Policy MN 3B: Using criteria to assess values and relationships in regard to section 6 of the Act

Include in any assessment required under Policy MN 1B, an assessment of:

(a) Natural character, in relation to section 6(a) of the Act, on the extent to which criteria consistent with those in Appendix F set 1: Natural character are met;

(b) Whether natural features and landscapes are outstanding, in relation to section 6(b) of the Act, on the extent to which criteria consistent with those in Appendix F set 2: Natural features and landscapes are met;

(c) Whether areas of indigenous vegetation and habitats of indigenous fauna are significant, in relation to section 6(c) of the Act, on the extent to which criteria consistent with those in Appendix F set 3: Indigenous vegetation and habitats of indigenous fauna are met;

(d) Public access to and along the coastal marine area, lakes and rivers in relation to section 6(d) of the Act, on the extent to which the criteria consistent with those in Appendix F set 6: Public access are met;

(e) The relationship of Māori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga, in relation to section 6(e) of the Act, on the extent to which criteria consistent with those in Appendix F set 4: Māori culture and traditions are met; and

(f) Historic heritage, in relation to section 6(f) of the Act, on the extent to which criteria consistent with those in Appendix F set 5: Historic heritage are met.

Explanation

In order that the region's matters of national importance are sustainably managed for present and future generations, they need to be more reliably assessed. Criteria are tools that assist in the identification and evaluation of matters of national importance for the purpose of promoting their protection. Having criteria in the Statement supports consistency in the assessment of section 6 matters, at regional, city and district levels, and can avoid duplication.

Criteria can help agencies identify the range of values that make up our region's matters of national importance, the threats to them, and options for their management. Criteria can focus attention on the

qualities and factors that raise people's awareness of their importance to the community, and help people understand more about themselves, their origins and their environment.

The criteria are to be used as a framework for assessment. They are not tests or standards that, by themselves, determine what protection is required. The criteria can be applied in regional and district plans, and in case-by-case consents assessments.

It is acknowledged that some districts come under the jurisdiction of more than one regional council. In such situations other regional criteria not inconsistent with those in Appendix F will be appropriate.

The majority of archaeological heritage in the region is of Māori origin. Accordingly, there are very close links between Māori culture and traditions under section 6(e) and historic heritage under section 6(f). Therefore with the exception of geothermal features (which are assessed using the Appendix F Set 7 Geothermal features criteria) assessments involving the Appendix F Set 4 Māori culture and traditions criteria should also consider the Appendix F Set 5 Historic heritage criteria.

*Table reference: **Objectives 18, 19, 20, 21** and **22**, Methods 3, 11, 12, 48 and 70*

Policy MN 4B: Encouraging ecological restoration

Encourage ecological restoration and rehabilitation through:

(a) Retention or establishment of vegetation corridors linking otherwise isolated habitats and greater use of buffer zones;

(b) A co-ordinated and co-operative approach;

(c) The protection of remaining habitats from further fragmentation, degradation and invasion by pests;

(d) Non-regulatory initiatives for the restoration or rehabilitation of degraded habitats; and

(e) The protection of ecosystems and habitats identified by the National Priorities for Biodiversity Protection on Private Land (Ministry for the Environment 2006).

Explanation

A range of complementary tools is needed to ensure that the intrinsic values and processes of ecosystems are safeguarded and might include education, provisions within regional and district plans, the purchase of land for reserves, buffers to adjacent land use, and the acquisition of land through reserves contributions. In addition, the use of heritage protection orders and water conservation orders, covenants and other voluntary agreements are also valid tools. Rates relief, resource consents conditions, and operational works such as fencing could also be used.

There are a number of agencies with various responsibilities for ecosystems management and greater interaction and greater integration of their work would avoid duplication of effort and maximise efficiency.

*Table reference: **Objectives 20, 27, 32** and **33**, Methods 3, 26, 27, 39, 49, 55, 63, 64 and 65*

Iwi Resource Management Policies

Policy IW 2B: Recognising matters of significance to Māori

Proposals which may affect the relationship of Māori and their culture and traditions must:

(a) Recognise and provide for:

(i) Traditional Māori uses and practices relating to natural and physical resources such as mahinga mātaitai, waahi tapu, papakāinga and taonga raranga;

(ii) The role of tangata whenua as kaitiaki of the mauri of their resources;

(iii) The mana whenua relationship of tangata whenua with, and their role as kaitiaki of, the mauri of natural resources;

(iv) Sites of cultural significance identified in iwi and hapū resource management plans; and

(b) Recognise that only tangata whenua can identify and evidentially substantiate their relationship and that of their culture and traditions with their ancestral lands, water, sites, waahi tapu and other taonga.

Explanation

All persons exercising functions and powers under the Act are required to recognise and provide for the relationship of Māori and their culture and traditions, with their ancestral lands, water, sites, waahi tapu, and other taonga as a matter of national importance. Pukenga, experts recognised by iwi and hapū in accordance with tikanga Māori, have the knowledge and mana to assess the importance of values and places to Māori.

In addition, the Act requires all persons exercising functions and powers under the Act, in relation to managing the use, development and protection of natural and physical resources, to have particular regard to kaitiakitanga. An important role for kaitiaki is to safeguard the mauri of their natural resources for the benefit of future generations, by ensuring that those resources are sustainably managed.

Only tangata whenua can identify their relationship with their special places. Those relationships must be substantiated for evidential purposes by pūkenga, kuia and/or kaumātua. Tangata whenua who have lived in an area for a long time can express their association with places that are special to them. When consistent assessment criteria (e.g. those in Appendix F sets 4 and 5) are applied by tangata whenua through their pūkenga, kuia and/or kaumātua who have the specialist or technical knowledge necessary to apply those criteria, they should reach a similar conclusion. In the event that the conclusions are different, decision makers must weigh the evidence.

Once pūkenga or persons who have the specialist or technical knowledge necessary to apply the criteria have assessed an historic heritage resource or Māori cultural relationships and values, decisions about their management are not predetermined; decision makers must still exercise judgement.

Table reference: ***Objectives 16, 17, 18, 21, 22*** *and* ***37****, Methods 3, 8, 11, 12, 26, 27, 39, 41, 42, 43, 44, 46, 48, 49, 55, 57, 64 and 65*

Policy IW 3B: Recognising the Treaty in the exercise of functions and powers under the Act

Exercise the functions and powers of local authorities in a manner that:

(a) Takes into account the principles of the Treaty of Waitangi;

(b) Recognises that the principles of the Treaty will continue to evolve and be defined;

(c) Promotes awareness and understanding of councils' obligations under the Act regarding the principles of the Treaty, tikanga Māori and kaupapa Māori, among council decision makers, staff and the community;

(d) Recognises that tangata whenua, as indigenous peoples, have rights protected by the Treaty and that consequently the Act accords iwi a status distinct from that of interest groups and members of the public; and

(e) Recognises the right of each iwi to define their own preferences for the sustainable management of natural and physical resources, where this is not inconsistent with the Act.

Explanation

The Act requires all persons exercising functions and powers under it in relation to managing the use, development, and protection of natural and physical resources, to take into account the principles of the Treaty of Waitangi (Te Tiriti o Waitangi). The Treaty is a living instrument and its principles continue to be defined – by the Courts, including the Environment Court, and the Waitangi Tribunal. Policy statements and plans should arise out of and be sensitive to the partnership principle of the Treaty. The objectives to be achieved should be such that both partners identify with them. Policy statements and plans can be a way of expressing what we hold in common.

The Treaty of Waitangi (Te Tiriti o Waitangi) established the special relationship between the Māori people and the Crown. The Treaty provided for the exchange of kāwanatanga (governance or government) for the protection of rangatiratanga.

Councils have the capacity, pursuant to section 33 of the Act, to provide for tino rangatiratanga by transferring functions, power, or duties to an iwi authority. However, any local authority that transfers any function, power, or duty under this section continues to be responsible for the exercise of it. The establishment and maintenance of this relationship is an ongoing issue for the region.

The division of resource management functions between regional and district councils requires close co-ordination to ensure an efficient allocation of resource management functions and duties.

Table reference: ***Objectives 12, 13, 14 and 15,*** *Methods 3, 11, 46 and 48*

Policy IW 4B: Taking into account iwi and hapū resource management plans

Ensure iwi and hapū resource management plans are taken into account in resource management decision making processes.

Explanation

Some iwi and hapū resource management plans identify sites of cultural significance, procedures for consultation and possible actions to address issues of concern to iwi and hapū. However, many do not, and where this is the case, consultation with affected tangata whenua may assist in identifying what measures are practicable to remedy, mitigate or avoid adverse cultural impacts. Most iwi and hapū prefer consultation as a more appropriate means of identifying the extent of cultural impacts and means of resolving them.

Table reference: ***Objectives 15, 16 and 21,*** *Methods 3, 12, 41 and 46*

Policy IW 5B: Adverse effects on matters of significance to Māori

When considering proposals that may adversely affect any matter of significance to Māori recognise and provide for avoiding, remedying or mitigating adverse effects on:

(a) The exercise of kaitiakitanga;

(b) Mauri, particularly in relation to fresh, geothermal and coastal waters, land and air;

(c) Mahinga kai and areas of natural resources used for customary purposes;

(d) Places sites and areas with significant spiritual or cultural historic heritage value to tangata whenua; and

(e) Existing and zoned marae or papakāinga land.

Explanation

Growth and development pressures have led to widespread destruction and degradation of places, sites and areas with cultural, spiritual or historic heritage value of significance to tangata whenua. These include incompatible land uses or activities being granted consent to locate beside papakāinga or marae. While many culturally significant sites are widely recognised by tangata whenua and in some cases documented in iwi and hapū resource management plans, they continue to be overlooked or disregarded in resource management decision making processes. Tangata whenua are increasingly seeking greater regard to kaitiakitanga by persons exercising functions and powers under the Act. Iwi and hapū seek greater involvement in the management of natural and physical resources within their respective rohe to fulfil their role as kaitiaki, and proactively address potential adverse effects on Māori culture and traditions.

Where a proposed subdivision, use or development may have adverse cultural effects measures to avoid adverse effects need to be identified. Where avoidance is not practicable measures to remedy or mitigate potential adverse cultural impacts will need to be identified.

Table reference: ***Objectives 16, 17, 18, 21, 28 and 37****, Methods 3, 8, 11, 12, 23N, 23O, 23P, 23Q, 41, 42, 43, 44, 46, 48 and 78*

Integrated Resource Management Policies

Policy IR 3B: Adopting an integrated approach

Adopt an integrated approach to resource management that:

(a) Recognises the interconnected nature of natural and physical resources, including as they adjust to changes;

(b) Recognises the multiple values of natural and physical resources;

(c) Responds to the nature and values of the resource and the diversity of effects (including cumulative and reverse sensitivity effects) that can occur;

(d) Seeks to maximise benefits by considering opportunities to align interventions (including regulatory and non-regulatory) and/or to achieve multiple objectives;

(e) Encourages developments, activities or land-use changes to:

1 Provide for the relationship between land use and water quality and quantity

2 Recognise the advantages and constraints of land use capability;

3 Provide for infrastructure and;

4 Benefit the economic wellbeing of communities.

(f) Takes a long term strategic approach which recognises the changing environment and changing resource use pressures and trends;

(g) Applies consistent and best practice standards and processes to decision making; and

(h) Recognises different community values and social needs;

and regards these as positive effects.

Explanation

Integrated resource management requires a holistic view that looks beyond organisational, spatial or administrative boundaries. For integrated management to be effective and efficient it requires a coherent and consistent approach and that agencies or organisations involved in resource management work together in a

collaborative manner. This is because there is overlap in the functions of local authorities and also resources and issues that cross jurisdictional boundaries.

Sustainable land management requires integrating the development and use of the land with the attributes of its wider environment: the availability of water and its capacity to receive contaminants without adverse effects, the ability of the land to retain its physical qualities while supporting the use, and recognition of and provision for the wider environment within which the activity occurs.

*Table reference: **Objectives 10, 11** and **14**, Methods 3, 9, 11, 41, 47 and 70**

Methods of Implementation

Method 41: Promote consultation with potentially affected tangata whenua

Promote consultation with tangata whenua and any other parties affected:

(a) Early in a proposal development and, as appropriate, to continue this consultation during the implementation of any consented activity; and

(b) As the occasion may dictate, in accordance with tikanga Māori (consultation may be through tribal federations or runanga, iwi authorities, hapū or whānau, depending on the issue).

Implementation responsibility: Regional council and city and district councils.