

Report to Policy and Strategy Committee August 2013 – Decision Required

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To: Chief Executive Officer

From: Group Manager - Policy and Transport

Subject: **Independent review of the Regional Plan. Giving effect to the Vision and Strategy**

Section: B (For recommendation to Council)

Purpose

To update the Committee on the independent review of the operative Waikato Regional Plan by Opus International Consultants Ltd, in relation to giving effect to the Vision and Strategy for the Waikato River/Te Ture Whaimana o Te Awa o Waikato River.

Recommendation:

1. That the report "Opus review of the Regional Plan to determine whether it gives effect to the Vision and Strategy" (Doc # 2790684, dated 26 July 2013) be received for information.
2. . That the independent review of the regional plan by Opus be discussed with the iwi for the Waikato and Waipa Rivers in a manner which complies with Council's obligations under the river and co- management legislation.

Background

There are three river settlement Acts¹ which set out co-management and co-governance arrangements for the Waikato and Waipa Rivers. These Acts outline the process for Council to follow to update Resource Management Act 1991 (RMA) planning documents to be consistent with, or to give effect to, the Vision and Strategy. The operative Waikato Regional Plan is one of the documents required to give effect to the Vision and Strategy.

In order to fulfil this legislative requirement, an independent review has been commissioned to assess the extent to which the Plan gives effect to the Vision and Strategy.

Legislative context for Review

Section 13(4) of the Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010, Section 14(4) of the Ngati Tuwharetoa, Raukawa and Te Arawa River Iwi Waikato River Act 2010 and Section 8(2) of the Nga Wai o Maniapoto (Waipa River) Act 2012, state that the Waikato Regional Council must review its regional plan to see whether it gives effect to the

¹ Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010, Ngati Tuwharetoa, Raukawa and Te Arawa River Iwi Waikato River Act 2010, and Nga Wai o Maniapoto (Waipa River) Act 2012.

Vision and Strategy for the Waikato River. If the regional plan does not give effect to the Vision and Strategy, then it must initiate an amendment to it to ensure that it does.

The Regional Council is required to follow the following process after commencing a regional plan review:

- Council must convene a joint working party with the identified River iwi (a joint working party has been defined as management level personnel)
- Must decide jointly on the final recommendation on whether to make an amendment to the regional plan with the Trust Boards of the identified River iwi
- Must also decide jointly on the final recommendation on the content of the regional plan
- Discuss with River iwi the potential to participate in decisions on the regional plan as a result of the review

At present, there is agreement that the regional plan review will be used to inform the Healthy Rivers: Plan for Change / Wai Ora: He Rautaki Whakapaipai plan change project.

Vision and Strategy for the Waikato River

The Vision and Strategy² is intended by Parliament to be the primary direction setting document for the Waikato River and activities within its catchment.

The Vision and Strategy prevails over section 59 to 77 of the Resource Management Act 1991 and any inconsistent provisions in any National Policy Statement or New Zealand Coastal Policy Statement.

There are 13 objectives and 12 strategies prescribed in the Vision and Strategy. The overarching purpose is to restore and protect the health and wellbeing of the Waikato River for future generations.

Commissioning the Review

In June 2012 Council commissioned Opus International Consultants Limited (Opus) to independently review the operative Waikato Regional Plan.

The consultant's brief was to:

- Develop a methodology for review and apply this to a Module of the regional plan to test the appropriateness of the methodology. Discussions will then be had with Council staff prior to embarking on the full review;
- Review the objectives and policies of the entire regional plan, including the recently operative sections 3.3 and 3.4 objectives policies and rules (noting the Environment Court decision in relation to giving effect to the Vision and Strategy) and provide advice as to whether it gives, or does not give, effect to the Vision and Strategy;
- Identifying the provisions in the regional plan that need to be addressed to give effect to the Vision and Strategy;
- Provide rationale on the advice given for the provisions that need to be addressed;
- Facilitate a workshop, with the Waikato River Authority to summarise the findings of the review and to seek feedback on the findings, and
- Provide a final written report that incorporates any relevant feedback from the workshop (this report).

It is also important to outline that the contract did not require Opus to:

- Provide recommendations on the process, structure and changes to be made to the regional plan;
- The identification of the immediate priorities from the review; and/or

²Schedule 2 of the Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010, Schedule 1 of the Ngati Tuwharetoa, Raukawa and Te Arawa River Iwi Waikato River Act 2010 and of the Nga Wai o Maniapoto (Waipa River) Act 2012

- An indication of the extent of work required by the Waikato Regional Council to make necessary changes to the regional plan.

In commissioning the review, Council advised Opus to undertake a literal/exact interpretation of the Vision and Strategy against the provisions in the Regional Plan.

Also, the scope of the review directed to Opus, was in acknowledgement that Council would work with iwi to proceed on the information gathered.

Observations on the Opus Report

The Opus report is in two parts

1. A comparative assessment of the Vision and Strategy provisions against the objectives and policies (and the rules of the Water module) in the Regional Plan, and
2. An analysis report of the findings outlined in the comparative assessment

The comparative assessment is a large body of work, and is a systematic and detailed assessment that was contained in a spreadsheet, to identify Regional Plan provisions that:

- Gave effect to the Vision and Strategy (green colour coding)
- Gave "limited effect" to the Vision and Strategy (blue colour coding)
- Did not give effect to the Vision and Strategy (red colour coding), and
- Was not applicable to the Vision and Strategy (yellow colour coding)

This approach enabled a visual interpretation of the review and a quick identifier on which provision(s) in the Regional Plan that give, or did not give, effect to the Vision and Strategy.

To support the comparative assessment, the analysis report provides the analysis across each Module (and the Module by Module analysis), to highlight gaps of the regional plan and attempts to identify whether the gaps were addressed in another Module of the regional plan.

This methodology has identified principles or themes in the Vision and Strategy that are not corresponding in Regional Plan. These are:

a) *The status of the Waikato River*

The Vision and Strategy elevates the status of the Waikato River above other water bodies and catchments in the Waikato region, where by the Regional Plan will need to give the highest level of recognition to the restoration and protection of the Waikato River. It is identified that there are no provisions in the Regional Plan that gives the Waikato River and its catchment that type of recognition.

b) *The application of Maaturationa Maori*

This new concept to support the application of the Vision and Strategy is not easily identified in the Regional Plan. The importance of working with River iwi and tangata whenua in providing suitable and appropriate provisions in the Regional Plan will help address this identified gap.

c) *The relationship values of the Waikato River and its catchment*

The Vision and Strategy specifically identifies three parties, *Waikato-Tainui*, *other Waikato River iwi*, and the *region's communities*, with objectives to restore and protect their relationship with the Waikato River. The Regional Plan does not specifically identify Waikato-Tainui or other Waikato River iwi in provisions to acknowledge their social, economic, cultural and spiritual relationships.

Without the Vision and Strategy being explicit on the hierarchy of the values/relationship, it is anticipated that the corresponding co-management framework with River iwi via Joint Management Agreements, will determine how each parties values/relationship are recognised, restored and protected.

d) To consider cumulative effects and to take a precautionary approach

In a limited number of policies in the Regional Plan, directives to consider cumulative effects are specifically stated and a clear direction is provided. However a cumulative effects approach to the Waikato River does not specifically exist and will need to be more explicitly stated in the regional plan review process.

Also, the Opus report outlines that although the precautionary approach is implied in the Regional Plan, it does not specifically meet Objective F of the Vision and Strategy. This may require either the adoption of a policy or the identification of activities where there may be low probability of adverse effects but a high impact in the event of their occurrence.

Variation 6 – Water Allocation provisions in the Regional Plan

Opus had a difficult task of reviewing the operative Regional Plan, especially sections 3.3 and 3.4 of the Plan, the provisions of Variation 6 – Water Allocation.

In commissioning the review, it was acknowledged that these provisions were supported by an Environment Court decision that the Variation 6 provisions gave effect to the Vision and Strategy; however as a matter of consistency, these provisions would be included in the Opus review.

The Opus report outlines that there are a high number of green colour coding (or provisions that give effect to the Vision and Strategy) in section 3.3 and 3.4 of the Regional Plan. However, because of the methodology employed by Opus, the comparative assessment has also identified provisions (objectives, policies and rules) in section 3.3 and 3.4 that do not give effect to the Vision and Strategy.

I do not believe this finding by Opus is a reflection that the provisions in section 3.3 and 3.4 are not giving effect to the Vision and Strategy and/or considered in contrary to the Environment Court decision. My interpretation is that the finding identifies that the provisions in section 3.3 and 3.4 did not necessarily consider all aspects of the Vision and Strategy.

As an example, the following provisions of the Vision and Strategy were identified by Opus as not given effect in the Variation 6 provisions:

- Objective B The restoration and protection of the relationships of Waikato-Tainui with the Waikato River, including their economic, social, cultural and spiritual relationships
- Strategy 5 Develop and share local, national and international expertise, including indigenous expertise, on rivers and activities within their catchments that may be applied to the restoration and protection of the health and wellbeing of the Waikato River

It is considered that the provisions in section 3.3 and 3.4 could not give effect to Objective B because it was developed in isolation of a co-management process with Waikato-Tainui. The settlement legislation and the legal weighting of the Vision and Strategy were introduced towards the end of the Variation 6 court process. Therefore it is considered that the time and collaborative process needed to appreciate how to restore and protect the relationship of Waikato-Tainui with the Waikato River, was impracticable at the time, and ultimately resolved in some Variation 6 provisions identified by the Opus report as not giving effect to Objective B.

The Opus report recommends that as the planning regime evolves and greater awareness and understanding the values of Waikato River iwi, there is potential for the provisions in section 3.3 and 3.4 to be improved and give substantial effect to the Vision and Strategy.

It should also be noted that not all provisions of the Vision and Strategy will be relevant to, or be repeated in, a regional plan. That is, a regional plan is only one tool to implement the Vision and Strategy. Other statutory plans that will give effect to the Vision and Strategy include the RPS and district plans. In addition, a regional plan is a regulatory tool and the Vision and Strategy includes a number of non statutory provisions (e.g. Strategy 5 relates to knowledge and information sharing).

Observation Summary

Council staff is supportive of the conclusion in the Opus report that ***the Regional Plan will require amendments to give effect to the Vision and Strategy***. Staff have interpreted this to state that the Regional Plan in its current state does not give effect to the Vision and Strategy³.

With hindsight, as the review progressed, it became apparent that an important part of the review was to define what “giving effect to” the Vision and Strategy in the Regional Plan meant.

Conclusion

The Waikato Regional Council has received an independent report to inform the Council that the operative Waikato Regional Plan does not give effect to the Vision and Strategy. Opus Consultants International Ltd has provided a report for Council that identifies areas where they think the Regional Plan needs to be improved and will be used as a baseline document to progress further with iwi partners, and hopefully, together with the Waikato River Authority.

In working towards meeting the requirements of legislation and to receive joint recommendations on whether to make an amendment to the Regional Plan, it is necessary that several workshops with iwi partners and the Waikato River Authority are undertaken. The use of the Opus report will provide the basis for those initial discussions and to get clearer understanding on the identified gaps (themes) in the Regional Plan.

A proposed action plan to progress the future amendment of the Regional Plan to give effect to the Vision and Strategy, is aligned with the requirements prescribed in legislation⁴, and is aimed to progress the findings of the Opus report in a manner that recognises the intent of the settlement and co-management legislation.

It is envisaged that this unified approach will help provide clarity and stability to the process for Council to meet its legislative requirement⁵ to amend the Regional Plan to give effect to Vision and Strategy, as well as provide guidance on the Healthy Rivers: Plan for Change / Wai Ora: He Rautaki Whakapaipai project.

Assessment of Significance

³ Section 13 (4)(b) of the Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010, Section 14 (4)(b) of the Ngati Tuwharetoa, Raukawa and Te Arawa River Iwi Waikato River Act 2010 and Section 8(2) of the Nga Wai o Maniapoto (Waipa River) Act 2012

⁴ Section 13(6) of the Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010, Section 14(6) of the Ngati Tuwharetoa, Raukawa and Te Arawa River Iwi Waikato River Act 2010 and Section 8(2) of the Nga Wai o Maniapoto (Waipa River) Act 2012

⁵ Section 13(4)(b) of the Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010, Section 14(4)(b) of the Ngati Tuwharetoa, Raukawa and Te Arawa River Iwi Waikato River Act 2010 and Section 8(2) of the Nga Wai o Maniapoto (Waipa River) Act 2012

Having had regard to the decision making provisions in the Local Government Act 2002 and the Council's Policy on Significance, a decision in accordance with the recommendations is not considered to have a high degree of significance.

James Whetu
Senior Policy Advisor
Policy and Transport Group

Vaughan Payne
Group Manager
Policy and Transport Group