

BEFORE THE HEARINGS PANEL

IN THE MATTER OF The Resource Management Act 1991

AND

IN THE MATTER OF Central Hawkes Bay Proposed District Plan Hearing
Stream 3 (Rural Environment)

**STATEMENT OF EVIDENCE BY STEPHEN GRAEME DAYSH
ON BEHALF OF HERETAUNGA TAMATEA SETTLEMENT TRUST,
TUKITUKI WATER SECURITY PROJECT AND WATER
HOLDINGS HAWKE'S BAY (FURTHER SUBMITTERS)**

31 MAY 2022

1. INTRODUCTION

QUALIFICATIONS AND EXPERIENCE

- 1.1 My name is Stephen Daysh. I am a partner with the firm Mitchell Daysh Limited, which practices as a planning and environmental consultancy throughout New Zealand, with offices in Auckland, Hamilton, Tauranga, Napier, Nelson and Dunedin.
- 1.2 I hold a Bachelor of Regional Planning (Honours) degree from Massey University and have over 35 years' experience as an environmental planner and project manager. I am a member of the New Zealand Planning Institute, the Resource Management Law Association, the New Zealand Geothermal Association, and the International Geothermal Association.
- 1.3 My specialist areas of practice include providing resource management advice to the private and public sectors, facilitating public consultation processes, undertaking planning analyses, managing resource consent acquisition projects, and developing resource consent conditions. I also have considerable experience as a process and meeting facilitator with a speciality in co-ordinating community-based option assessment processes for planning issues, often utilising multi-criteria evaluation methodologies.
- 1.4 I am an accredited Hearings Commissioner (with a Chair's endorsement) and have acted as a Hearings Commissioner on approximately 100 occasions, many in the role of Hearing Chair. I am currently the Chair of the New Plymouth District Proposed District Plan Hearings Panel.
- 1.5 My relevant experience includes:
 - a) Advising the Hawke's Bay Regional Council on the Heretaunga Water Storage Project which is supported with funding from the Provincial Growth Fund with the purpose of developing a number of water storage projects across the region, including the Central Hawke's Bay Managed Aquifer Recharge Project.

- b) A key strategic advisor for the Hawke's Bay Regional Council for the Ngaruroro Water Conservation Order which was an application considered by the Environmental Protection Authority Tribunal.
- c) Designing and facilitating community-based alternatives assessment process for a wide range of planning issues, often utilising multi-criteria evaluation methodologies.
- d) Drafting fair, effective and workable consent conditions (along with other mechanisms such as private agreements in some instances) for resource consents.
- e) I am currently advising a number of clients including both councils and private clients in respect of projects under the National Policy Statement for Freshwater 2020 (NPS-FM 2020) and the National Environmental Standards for Freshwater 2020 (NES-FM) including:
 - Advice to Hawke's Bay Regional Council;
 - Advising rural landowners in Hawke's Bay; and
 - Various water take and discharge applications.

1.6 While this is not an Environment Court hearing, I confirm my obligations in terms of the Code of Conduct for Expert Witnesses contained in the Environment Court Practice Note 2014. I confirm that the issues addressed in this brief of evidence are within my area of expertise. I have not omitted to consider material facts known to me that might alter or detract from the opinions that I express.

Scope of evidence

1.7 Mitchell Daysh Limited has been engaged by the Heretaunga Tamatea Settlement Trust ("**HTST**") to provide resource management advice about the Central Hawkes Bay Proposed District Plan (the "**PDP**"). I assisted in the preparation of HTST's submission and further submission on the PDP. I am also engaged as a strategic advisor to Tukituki Water Security Project (Tukituki Water) and Water Holdings Hawke's Bay (Water Holdings) who are further submitter's to HTST submission.

- 1.8 Liz Munroe on behalf of HTST has presented evidence in support of the HTST submissions during the Hearings Stream 1 and this evidence builds on that previous evidence.
- 1.9 In this statement of evidence, I will:
 - 1.9.1 Summarise the background to HTST’s submissions;
 - 1.9.2 Outline the main aspects of the relief sought by HTST and address the recommendations of the Section 42A report;
 - 1.9.3 Where my recommendation differs to that of the Section 42A report, my suggested amendments to the provisions and reasons for those changes; and
 - 1.9.4 Provide a brief conclusion.
 - 1.9.5 Provide an evaluation under section 32AA
- 1.10 HTST submission included numerous points not addressed in this statement of evidence. With respect to those submission points, they are to be addressed in different hearing streams.
- 1.11 In preparing this statement I have reviewed the following material:
 - 1.11.1 HTST’s submission and further submission on the PDP;
 - 1.11.2 The further submissions of Tukituki Water and Water Holdings;
 - 1.11.3 Other relevant submissions and further submissions; and
 - 1.11.4 The Council’s report and recommended provisions relating to the rural environment, prepared under RMA Section 42A (the “**s42A report**”).

2. BACKGROUND TO HERETAUNGA SETTLEMENT TRUST SUBMISSION

- 2.1 HTST was established in 2016 as the post settlement governance entity for Heretaunga Tamatea. HTST administers the Heretaunga Tamatea Treaty settlement signed between Heretaunga Tamatea and the Crown on 26

September 2015 and enacted by Parliament in 2018. A copy of the Statutory Acknowledgement sites was appended to the HTST submissions.

2.2 Te Rohe of Heretaunga Tamatea comprises around 1.5 million acres of land extending from the Tūtaekurī River in the north, following the ridge of the Ruahine Range south to Takapau, then turning seawards to Pōrangahau. The rohe contains five primary river systems, which comprise an alluvial plains system fuelled by the Heretaunga and Ruataniwha aquifers. All of the Central Hawke's Bay District is within this area.

2.3 HTST has specific interest in the following sites located in the Rural zones of the PDP:

- Section 7 Block II Motuotaraia Survey District and Lot 1 DP 7057 – Lake Whatumā;
- Lot 4 DP 25272 – Pukeora;
- Part Lot 1 DP 25272 – Pukeora; and
- Part Lot 29 DP 4416 – Te Aute College.

2.4 Each of these areas provide an opportunity for tangata whenua to live and prosper on their land or develop the land for environmental, training or education purposes. This land has been returned to hapū through redress and are areas where hapū originally lived and worked and undertook cultural and traditional activities within the Central Hawke's Bay District. It is the vision of HTST that the areas located close to Waipukurau at Lake Whatumā and Pukeora be developed to enable subdivision, development and use in line with the indicative concept plans on the edge of Waipukurau. The redress also includes Te Aute College, which has a rich tradition, culture and history providing Māori education. HTST has a vision for Te Aute College creating an opportunity to develop and grow the College to ensure that it develops and continues its culture, heritage values and traditions of Māori education for future generations in the District. It is essential that there is an opportunity for Te Aute College to grow and ensure that it provides an excellent education facility for tamariki to learn and excel and become the future leaders of their hapū.

Preserving Treaty settlement outcomes and commitments

- 2.5 In the Crown Apology to Heretaunga Tamatea, recorded at section 10(g) of the Heretaunga Claims Settlement Act 2018, the Crown said: “*The Crown looks forward to restoring a relationship with the hapū of Heretaunga Tamatea that is built on trust, co-operation, and respect for each other and the Treaty of Waitangi and its principles.*”
- 2.6 It is important to ensure that the PDP includes appropriate objectives, policies and rules in the Rural Environment to ensure that mana whenua across the district can live and prosper and provide for future generations.

3. HERETAUNGA TAMATEA SETTLEMENT TRUST SUBMISSION S120.0010 AND THE FURTHER SUBMISSIONS IN SUPPORT BY TUKITUKI WATER AND WATER HOLDINGS AND THE S42A RECOMMENDATIONS

- 3.1 Within the Rural Environment Strategic Direction & General Matters HTST submission point requested a new policy as follows:

RLR-PX - Tangata whenua recognise the need for an economically sustainable rural environment which has access to reliable stored water resources to ensure the productive capacity of the land is maintained.

- 3.2 HTST outlined that the opportunities that the Crown Settlement provides including the ability for people who have been dispossessed of their land in Central Hawke’s Bay to return to it and as such HTST understands the importance of ensuring the sustainable management and the economic value of the highly productive rural areas of the district. HTST identified that one way of ensuring the productive capacity of the land is through access to stored water. The s42A report recommends rejecting this relief¹ of HTST and further submitters stating that:

“it is unclear from the submission what resource management issue this is addressing, and the linkages between the issue, objectives, policies and methods in the PDP are unclear to me.

¹ Paragraphs 5.3.26 -28 of the Rural Environment – Volume 1 S42A report.

It may be helpful if the submitter could provide further basis for inclusion of such a policy, and an accompanying section 32AA assessment, for the Hearings Panel to consider. In the absence of this, my recommendation is to reject this submission.”

Resource management issue

- 3.3 The ability for highly productive land to have access to a reliable water source is an essential and critical resource management issue which is of particular concern to mana whenua and all rural landowners involved in rural production across Central Hawke’s Bay. The key issue of the Rural Environment states:

RLR-11 Incremental Loss of Highly Productive Land

- 3.4 The focus of the PDP is on land fragmentation however, with reducing access to water into the future, it is my opinion that the productive output from the rural land resource across the District over time will diminish if there are no infrastructure interventions to store rainfall in the future.
- 3.5 Objective 1 seeks to **maintain** the productive capacity of the District’s rural land resource but there is no consideration in the objectives or policies for how this is to be maintained other than through limiting fragmentation.
- 3.6 The introduction to the Strategic Direction² states:

“Providing for a range and flexibility of land use activities is important for the future in adding diversity and resilience to the rural economy, thereby providing additional employment and economic opportunities to the community. However, this needs to be consciously balanced against the need to protect and retain the rural land resource, in particular the concentration of highly productive land in the District, alongside the health and availability of water”.

- 3.7 HTST consider that the matters identified in the introduction to the Rural Environment Chapter are not adequately reflected in the objectives and

² Part 2 – District-Wide Matters Page RLR 1 & 2

policies of the PDP. As noted above there is a balance between the health and availability of water and resilience of the highly productive rural environment.

- 3.8 In particular, the National Policy Statement for Freshwater 2020 (“**NPSFM 2020**”) has highlighted that the health of water is of primary importance and provides direction on how freshwater should be managed under the RMA. Local authorities must give effect to the NPSFM 2020 “as soon as reasonably practicable”.
- 3.9 Te Mana o te Wai is the fundamental concept underpinning the NPSFM 2020, recognises that protecting the health of freshwater protects the health and well-being of the wider environment and protects the mauri of the wai. This is an important factor in considering the objectives and policies of the Rural Environment in terms of enabling highly productive land.
- 3.10 The NPSFM 2020 states that it is about protecting “the mauri of the wai” and “restoring and preserving the balance between the water, the wider environment and the community” [section 1.3(1)] and that it encompasses 6 principles relating to the roles of tangata whenua and other New Zealanders in the management of freshwater.
- 3.11 The 6 principles are:
- *Mana whakahaere*: the power, authority, and obligations of tangata whenua to make decisions that maintain, protect, and sustain the health and well-being of, and their relationship with, freshwater;
 - *Kaitiakitanga*: the obligation of tangata whenua to preserve, restore, enhance, and sustainably use freshwater for the benefit of present and future generations;
 - *Manaakitanga*: the process by which tangata whenua show respect, generosity, and care for freshwater and for others;
 - *Governance*: the responsibility of those with authority for making decisions about freshwater to do so in a way that prioritises the health and well-being of freshwater now and into the future;
 - *Stewardship*: the obligation of all New Zealanders to manage freshwater in a way that ensures it sustains present and future generations; and

- *Care and respect*: the responsibility of all New Zealanders to care for freshwater in providing for the health of the nation.

3.12 As I have noted above, Te Mana o te Wai prioritises first, the health and well-being of water bodies and freshwater ecosystems; second, the health needs of people (such as drinking water); and third, the ability of people and communities to provide for their social, economic, and cultural well-being, now and in the future.

3.13 The availability and use of water is a key *Stewardship* consideration in maintaining the highly productive capacity of the rural environment of the district and I consider that the principles set out above identify a resource management issue that needs to be considered, particularly in the way that the Rural Environment chapter ensures it sustains present and future generations in terms of both the health of water and highly productive landuses. Tukituki Water and Water Holdings both support the submission of HTST for the inclusion of a specific clear policy on this issue. After an extensive Board of Inquiry hearing in 2013-2014 a suite of regional and district council resource consents were granted for a major water storage project (The Ruataniwha Water Storage Scheme - RWSS). These resource consents were granted for 35 years and have a 10-year lapse period expiring in June 2025. They include an extensive array of resource consent conditions, including conditions relating to water quality and a \$10million environmental offset package. The RWSS applications were supported by Te Taiwhenua o Tamatea.

3.14 You have already heard from Mr Petersen and Mr Ritchie in Hearing 1 regarding their aspirations for utilising these resource consents. In 2021 I was engaged as part of a team of advisors to reassess the feasibility of what is now called the Tukituki Water Security Project and this work confirmed that large storage at the consented Makaroro site is the only viable and feasible solution for long term water storage to maintain rural production and offset climate change in the District³. Such a scheme is important in planning terms to ensure the strategic objective of maintaining the

³ Tukituki Water Security Limited Re Scoping Report, November 2021, Lewis Tucker & Co. (available if the Panel would like a copy)

productive potential of the rural land resource. Accordingly my view is it is critical that the Rural Environment section of the PDP includes a clear policy supporting and linking water storage activities to the maintenance of productive outputs from high quality land resources.

Linkages between the issue, objectives, policies and methods

- 3.15 As noted in paragraph 3.6 above, the strategic direction of the Rural Land Resource clearly identifies that Council is required to manage the rural land resource while safeguarding water and ecosystems. The strategic direction further identifies that highly productive land in New Zealand is rare⁴ and further states:

“The District’s highly productive land is a significant resource base for the District, and has been deemed to be of regional, if not national, significance warranting specific recognition in the District Plan for its finite characteristics and high value for primary production purposes.”

- 3.16 RLR – O1 seeks to maintain the productive capacity of the rural land resource. With restrictions on water takes implemented by the HBRC Plan Change 6 in combination with clear evidence of a drying climate on the East coast of the North Island, this “maintain” objective relies on the ability to have ongoing access to water for growing.
- 3.17 The effects of climate change on the East Coast will be dramatic and challenging. As noted in the draft National Adaptation Plan, New Zealand faces some of the greatest natural hazard risks of any country in the world and climate change will increase the severity and frequency of some natural hazards. In 2017 drought cost New Zealand \$720 million. The severe Hawke’s Bay drought in 2020/2021 is testament to this. Improving water efficiency, availability and security is a key priority of the draft National Adaptation Plan. Evidence was provided to the Tukituki Board of Inquiry by Dr James Renwick that outlines the future drying trend and I rely on this for my opinion on this matter.⁵

⁴ Part 2 – District Wide Matters Strategic Direction RLR -Rural Land Resource - Page RLR-1

⁵ Climate Change Review, March 2013 J A Renwick

- 3.18 The first anticipated environmental result RLR -AER1 included in the Rural Environment Chapter states *“The safeguarding of the District's rural land resource and its life supporting capacity for current and future generations.”*
- 3.19 The new policy recommended by HTST is appropriate if the Council wishes to safeguard the highly productive land capacity of the District given the challenges of the drying trend and limitation of access to “run of the river” and ground water resources that are codified in Plan Change 6 to the Hawke’s Bay Regional Resource Management Plan.
- 3.20 In conclusion, I am of the view that the additional policy has very clear linkages to both a resource management issue and the issues, objectives, policies and methods of the Rural Environment. I have also further considered the drafting of the policy as this is clearly a wider district plan policy issue than just an issue related to tangata whenua interests.
- 3.21 I have therefore suggested a reword of the proposed new policy so that it applies more generally to the Rural Environment and suggest the following minor amendment:

RLR-PX - To provide for an economically sustainable rural environment which has access to reliable stored water resources to ensure the productive capacity of the land is maintained.

4. SUBMISSION S120.023 – RURAL LIFESTYLE ZONE

- 4.1 The submission requests that SUB-S1(8) Rural Lifestyle zone be amended as follows:
- A 2,500m² minimum lot size where a 4,000m² average is achieved.¹
- 4.2 In particular HTST note that within the proposed Lake Whatumā and Pukeora Concept Development Areas an ability for a minimum lot size of 2,500m² is appropriate. The s42A report recommends that there is some merit in considering a reduction in the minimum net site area requirement for the Rural Lifestyle Zone as this zone has been specifically developed to provide sustainable opportunities for rural living. Policy RPROZ-P2

4.3 I support the s42A recommendation to amend SUB-S1(8) to provide for 2,500m², with a minimum 4,000m² average in the Rural Lifestyle Zone.

5. SUBMISSION S120.025 PROVISION FOR “COMMUNITY FACILITIES”

5.1 The s42A report recommends rejecting HTST’s submission to amend GRUZ-R10(3) and RPROZ-R10(3) so that community facilities with buildings over 100m² are a controlled activity.

5.2 The focus of the submission of HTST was to enable the development of community facilities that support the rural environment without having a rigorous consenting pathway. I consider that community facilities are important components of the rural environment that add to the vibrancy of rural communities and provide essential facilities such as meeting places and access to much needed community facilities. Therefore, I do not agree with the s42A report conclusion, and I suggest that similar to the provision for educational facilities in the rural zones of up to 200m² it is appropriate to also provide for community facilities of up to 200m² as a controlled activity.

6. CONCLUSION

6.1 I appreciate the opportunity that the s42A report author has requested to clarify the important resource management linkages between the district’s highly productive rural land resource being maintained and a clear stored water policy. I consider that my analysis above has clarified this issue and one of the key policies for the Rural Environment is providing for future generations, the health of the District’s water resource and consideration of the District’s changing climate which has the potential to have a dramatic change on rural land uses into the future.

6.2 As such, it is my view that it is appropriate to include a policy in the Strategic Direction, Rural Environment chapter of the PDP that appropriately recognises the importance of stored water in relation to the ability to maintain highly productive land uses.

6.3 I have also commented on the other submissions of HTST to the provisions of the Rural Environment chapter which will ensure that the specific land uses of HTST can be enabled into the future.

Section 32AA Evaluation

Effectiveness and efficiency

- The recommended new policy RLR-PX fills a critical gap in the policy regime of the PDP associated with the active policy support for water storage activities to enable the maintenance of primary production from the District's land resource and is therefore its inclusion will be more effective than the notified PDP that has no reference to the important nexus between water storage activities and productive land use.
- Policy RLR-PX better promotes *the efficient use and development of natural and physical resources* as set out in Section 7b) of the RMA through actively acknowledging that, with future predicted climate change leading to a drier Central Hawke's Bay District in the future coupled with substantial restrictions in primary producers access to surface and groundwater to support growing food and other crops codified in HBRC Plan Change 6, than the notified PDP.

Costs/Benefits

- Through providing for an economically sustainable rural environment linking stored water with productive rural land use, Policy RLR-PX recognises the substantial economic costs that will accrue to the District if secure water supply can not be accessed for today's community and future generations to support their economic wellbeing. In comparison, the PDP as notified has no direct policy support for this critical issue.

Risk of acting or not acting

- If recommended Policy RLR-PX is not included in the PDP there is clearly a risk that existing and future resource consents seeking to capture and store rainwater, that would otherwise pass through the District, are not supported by a directive policy in the Central Hawke's Bay District Plan.

Decision about most appropriate option

- The hearings panel has a choice between no policy support linking stored water resources to the objective of the maintenance of the productive use of the District's land resource (in the notified PDP) and the inclusion of Policy PLR-PX as recommended in my client's submission. In planning terms, it is my opinion that the inclusion of Policy PLR-PX fills a significant policy void in the PDP as notified, and its inclusion in the PDP is the most appropriate option in terms of these two choices.