

Report on Plan Change 2 Taupo Overseer Version Streamlined Planning Process Steps 1-5

The Statement of Expectations for Plan Change 2 (PC2) Taupo Overseer Version states:

The Waikato Regional Council shall provide a written report to the Minister within 10 working days of the completion of Steps 1 to 5 above. These reports shall demonstrate compliance with the steps and timelines and identify any issues which may have a bearing on meeting the Minister's Direction and Statement of Expectations.

This report discusses Steps 1-5 to satisfy this requirement.

Step 1 Complete pre notification consultation on proposed Regional Plan Change 2: Taupō Overseer, including consultation with Te Kōpu ā Kānapanapa Co-Governance Committee. To be completed no later than 10 working days from Gazettal.

Waikato Regional Council (WRC) staff discussed the wording of this step with Ministry for the Environment (MfE) staff during the 10 working days that the draft Direction was available for comment. Ministry staff stated that this step was about consultation during the stage at which the draft plan change was being developed. We noted to the Ministry that the Te Kōpu ā Kānapanapa Co-Governance Committee was still being formed during this stage. Their initial meeting was September 2019 which was focussed on matters to formally establish the Committee. The second meeting, in December 2019 focused on further establishment matters and implementation of the Treaty Settlement legislation (at the time of writing this Steps 1-5 report there had not yet been a third meeting of the Te Kōpu ā Kānapanapa Co-Governance Committee). The draft Plan Change 2 documents had been completed by December 2019 and had been sent out to key parties for comment. There has therefore been no opportunity to discuss development of the draft plan change documents with the Committee prior to their completion. When asked about this, Ministry staff stated that consultation with representatives of the member agencies of the Co-Governance Committee during development of the draft plan change documents would satisfy the requirement of Step 1.

The member agencies of the Te Kōpu ā Kānapanapa Co-Governance Committee are Te Kotahitanga o Ngāti Tūwharetoa (the group of hapu representatives that negotiated the Treaty Settlement), Taupo District Council and Waikato Regional Council. The following table notes key consultation with these parties during the time that thinking about PC2 was developing:

Date	Consulted party	Comments
14 December 2017	Representatives of Te Kotahitanga o Ngāti Tūwharetoa	Discussion to identify issues related to the Taupō regional plan provisions
15 December 2017	Taupo District Council staff	An initial meeting with a range of Council staff to discuss the review of the regional plan Taupo provisions
11 September 2019	Email sent to Te Kotahitanga Te Kotahitanga o Ngāti Tūwharetoa	The email briefly described the need to change the regional plan to allow updated versions

		of Overseer to be used, and the suggested SPP process. Recipients were asked if they would like to meet with Council staff to discuss these matters.
20 September 2019	Lake Taupo Protection Project Joint Committee	Update on the Plan Change 2 (PC2) process. Members of this Committee include Taupo District Council, Waikato Regional Council and Tūwharetoa Trust Board.
23 September 2019	Te Kotahitanga o Ngāti Tūwharetoa	A one and a half hour meeting was held with two key members of Te Kotahitanga where the plan change content and the proposal to use the SPP process were discussed in detail.
Leading up to release of draft PC2 documents	WRC staff	Over the period 2017 to November 2019 when the draft documents many discussions were held with WRC staff.
26 September, 2019	WRC Councillors	A detailed report to a WRC Council meeting described the need for the plan change and possible solutions.

WRC staff have therefore consulted with representatives of the member agencies of the Co-Governance Committee during development of the draft plan change documents.

Prior to release of the draft plan change documents for comment in November 2019, apart from consultation described above, many other parties were consulted as the plan change was being developed. The following parties in particular were consulted and had input into the ideas that resulted in the draft plan change documents:

- Tūwharetoa Māori Trust Board
- Lake Taupō Protection Trust (Managed an \$80m public fund to reduce the manageable load of nitrogen entering the lake by 20%)
- Iwi authorities - Mokai Marae Reserve/Tuaropaki A Trust, Ngāti Turangitukua Charitable Trust, Raukawa Settlement Trust, Central North Island Forests Iwi Collective
- A collective of Tūwharetoa farm managers
- Taupō Lake Care - Farmer organisation set up during the initial process that developed the Taupō rules
- NZ Forest Managers and Lake Taupō Forest Trust who are responsible for management of many Taupō catchment forests and who have had a long term involvement in the Taupō provisions
- Taupō Lakes and Waterways Action Group - A local interest group who have been actively involved in protection of Lake Taupō since before the Taupō provisions were developed

- The Ministry for the Environment and the Ministry for Primary Industries were kept up to date about the plan change through meetings of the Lake Taupo Protection Project Joint Committee
- Two public meetings were held to discuss the plan change on 23rd October. Invitations to the meetings were sent out to consented farmers, other known farmers that may have been interested, farm consultants, Department of Conservation, Dairy NZ, Beef and Lamb NZ and a range of other stakeholders. Forty-four people attended the meetings in total.

In these ways, pre-consultation as required by Step 1 was completed during development of the draft plan change documents.

Step 2 Provide a copy of the proposed Regional Plan Change 2: Taupō Overseer to relevant iwi authorities (including Te Kotahitanga o Ngāti Tūwharetoa) and have particular regard to any advice received on the proposed Regional Plan Change 2: Taupō Overseer in accordance with Clause 4A of Schedule 1 of the RMA. To be completed within 20 working days from the completion of Step 1.

WRC staff also discussed the wording of this step with MfE staff during the 10 working days that the draft Direction was available for comment. At this meeting, Ministry staff stated that this step was intended to be about consultation on the draft plan change documents. The draft plan change documents were provided to key parties during November and December 2019 for comment. Changes were made to these draft documents on the basis of feedback prior to them being finalised for public notification.

The draft plan change documents (Section 32 report, Strikethrough version of the Waikato Regional Plan Chapter 3.10 showing recommended changes, and a technical report that described the reasons for the changes in detail) were sent to the following Iwi Authorities:

- Tūwharetoa Māori Trust Board – Emailed documents to the Environmental Manager on 9 December 2019 and an offer to discuss the documents was made. A follow up offer was made on 14 January 2020. No comments were received (Note that the Trust Board had been kept well informed about the plan change through the process).
- Te Kotahitanga o Ngāti Tūwharetoa – meeting with representatives on 22 November 2019 and talked through the documents shortly after – no particular changes requested.
- Central North Island Forests Iwi Collective – 6 November 2019 – response that the Iwi Collective did not need to be involved in the formal part of this plan change.
- Mokai Marae Reserve/Tuaropaki A Trust – 18 December 2019 – emailed documents then met to discuss them on 4 February 2020. No particular changes requested.
- Ngāti Turangitukua Charitable Trust – repeated attempts to contact the Trust were made through the period November 2019 through February 2020. Contact was finally responded to on 2nd March when documents were again sent through, and a brief meeting with the contact occurred on 11th March – no further response occurred.
- Raukawa Settlement Trust – a representative talked to WRC on 4 October about the plan change, and said they didn't need to comment, but did want to be kept informed.

No changes to the plan change documents were requested during this process. The main detailed responses to the plan change documents were provided during the meeting with the Tuwharetoa Farm Collective on 4 March 2020, which would have included people from one or more of the Iwi Authorities. Many questions were asked about the plan change, mostly to seek a better understanding of how the change from Overseer v5.4.3 to OverseerFM would occur. The Collective seemed to get a good

understanding of how the change would work. The main issue of contention related to nitrogen leasing arrangements. There was a request that the plan change provide clearer guidance on how leasing would occur under OverseerFM and later versions. As a result, an Advisory Note was added to the two nitrogen trading rules (3.10.5.7 and 3.10.5.8) that stated:

Leasing of nitrogen: When a land owner temporarily leases nitrogen to or from another land owner, a temporary 'Nitrogen leasing Overseer Reference Dataset' will be developed for each property subject to the lease, which reflects the changed Nitrogen Discharge Allowances under the leasing arrangement. On expiry of the lease, both properties will revert to being managed in accordance with the pre-lease Overseer Reference Datasets.

Significant attempts to share and discuss the draft plan change documents were therefore made prior to notification. The only request for a change was responded to in the notified plan change documents. In these respects, Step 2 was completed as requested. Note that Step 2 was to have been completed within 20 working days of the completion of Step 1. In hindsight, this was an odd request as discussions about the draft documents continued to occur up to the time of notification, which would seem reasonable. As the draft documents were released for comment in mid November 2019, the 20 working day period would have finished in Mid December. Note that the Streamlined Planning Process was not Gazetted until 21 April 2020, despite the application being lodged on 15 November 2019. It would seem unreasonable therefore for Step 2 to have been completed by Mid December 2019.

Step 3 Publicly notify proposed Regional Plan Change 2: Taupō Overseer in accordance with clause 5 of Schedule 1 of the RMA. A period of 20 working days for submissions must be specified in the public notice. To be publicly notified no later than 10 working days after completion of Step 2.

On 26 March, Waikato Regional Council approved the proposed Plan Change 2 Taupō Overseer version documents for public notification. This was right at the beginning of the COVID19 lockdown. Council was concerned that immediate notification would not have been appropriate given that people needed time to adjust to the lockdown before attending to other business. Council therefore asked the Ministry to delay the Streamlined Planning Process for up to a month, to give people time to adjust to the new circumstances before needing to respond to the notification. This was agreed, and gazettal occurred on 21 April.

Waikato Regional Council notified Plan Change 2: Taupo Overseer Version on 30 April 2020. A copy of the notice is appended to this report. A period of 20 working days was allowed for submissions, which meant that the submission period closed on 28 May. Note that Step 2 effectively was completed at the time the COVID19 lockdown period began. Public notification would have therefore been later than 10 working days after the completion of Step 2. This was a direct result of the lockdown.

The following three documents were notified:

1. A strikethrough version of Waikato Regional Plan Chapter 3.10: Lake Taupo Catchment, showing the changes proposed to be made to the provisions
2. A Section 32 evaluation report
3. A technical report describing in detail the reasons for the proposed changes

In accordance with Schedule 1 Clause 5(1C) Waikato Regional Council sent a copy of the public notice, a link to the Waikato Regional Council website containing the three notified documents, and a copy of the Minister's Direction and Statement of Intent for the Streamlined Planning Process to people who may be

directly affected by the plan change. Approximately 1100 letters were sent, including to all the land owners with consent pursuant to Chapter 3.10 rules.

In accordance with Schedule 1 Clause 5(4) Waikato Regional Council sent a copy of the public notice, copies of the three notified documents, and a copy of the Minister's Direction and Statement of Intent for the Streamlined Planning Process, to:

- The Minister for the Environment
- Iwi Authorities with interests in the Taupo Catchment and Te Kotahitanga o Ngāti Tūwharetoa
- District Councils in the Waikato Region
- Neighbouring regional councils

In accordance with Schedule 1 Clause 5(5), Waikato Regional Council sent copies of the plan change documents to the 43 public libraries in the Waikato Region for public display. Copies were also put on display at Waikato Regional Council offices and were sent to the Parliamentary library for display.

Step 4 Provide an opportunity for written submissions in accordance with clause 6 of Schedule 1 of the RMA. Public submissions to be received no later than 20 working days after public notification (Step 3).

As shown in the appended public notice, an opportunity for written submissions in accordance with clause 6 of Schedule 1 was provided for. Nine submissions were received within the 20 working day notification period. A late submission was also received from the Raukawa Charitable Trust on 24 June and this has since been accepted by Waikato Regional Council pursuant to Section 37 and Schedule 1 Clause 81(3)(b) of the Resource Management Act 1991 .

Step 5 If requested or on its own initiative, the Council will undertake resolution of disputes in accordance with clause 8AA of Schedule 1 of the RMA (to the extent applicable under this Direction). To be completed within 40 working days from the close of submissions (Step 4).

Most submitters generally supported the plan change. Some submitters raised very minor matters that could be responded to relatively easily and without further correspondence with the submitters. For slightly more involved matters, Waikato Regional Council staff met virtually with submitters to discuss their submissions for the purpose of clarifying or facilitating the resolution of matters raised. Federated Farmers and Taupo District Council were responded to in this way.

Three submitters, who requested that they be referred to collectively as the Te Ture Whenua/Settlement land submitters, raised more substantial issues about the Plan Change (Lake Taupō Forest Trust and Lake Rotoaira Forest Trust, CNI Iwi Land Management Limited and N.Z. Forest Managers). They considered that the plan change was going to result in them not being able to use Rules 3.10.5.4 and 3.10.5.5 to apply for additional nitrogen leaching allowance that is currently provided for by those rules. The fact is that this is not a result of the plan change, but a result of the fact that those rules can only be used while the Overseer version required to be used in the rules (Overseer v5.4.3) still functions. The only change to these rules was to add an Advisory Note stating in effect that the rules can only be used while Overseer v5.5.4 still functions. The Section 32 report noted that changing these rules to allow updated Overseer versions to be used could involve further discussions about nitrogen allocation, and that therefore the change would have been too complex for a Streamlined Planning Process.

However, the issues raised by the Te Ture Whenua/Settlement land submitters were significant, and for this reason Council decided that the Clause 8AA process should be used to seek resolution as much as possible. Waikato Regional Council began processes to contract a mediator to help with this process. Emails were sent out to the submitters asking if they consent to a mediation process as required by Clause 8AA(3).

Waikato Regional Council staff phoned one of the Te Ture Whenua/Settlement land submitters on the day after the close of the submission period to let them know that rules 3.10.5.4 and 3.10.5.5 will still continue to operate until v5.4.3 expires in December this year. It was suggested that they may like to explore the potential to apply for consent under these rules while they are still operative.

The Te Ture Whenua/Settlement land submitters invited two Waikato Regional Council staff to a virtual meeting on 10 June to discuss next steps. At the meeting the submitters said that they would like to apply for the remaining available nitrogen in rules 3.10.5.4 and 3.10.5.5. Staff noted that the application would need to address and satisfy the conditions in the rule, some of which are very difficult to interpret. No guarantees were given that such an application would be granted, however it was agreed that it was worth trying.

Waikato Regional Council Resource Use staff were informed of the discussion with these submitters. They also considered that some of the rule's conditions were difficult to interpret and sought legal advice on how the rules should be interpreted.

Meanwhile, Policy staff considered further the request by the Te Ture Whenua/Settlement land submitters to change the rule so that it could function with updated Overseer versions. A new idea to fix the problem was sparked by a comment in the meeting with the submitters that Council had "fixed things for the farmers but had not fixed things for the foresters". Staff then started to develop an idea that would allow rules 3.10.5.4 and 3.10.5.5 to continue to function after version 5.4.3 expired, which had some practical similarities to the Overseer Reference Dataset solution provided for farmers, and avoided the complexities originally thought to prevent such a solution through the Streamlined Planning Process.

While this process was continuing, Raukawa Charitable Trust provided a late submission. The main point of the submission was to also request that rules 3.10.5.4 and 3.10.5.5 be changed so that they continue to function after version 5.4.3 expires. The status of a late submission under a Streamlined Planning Process was unclear. However, the proposed solution to enable these rules to continue to function was also shared with Raukawa Charitable Trust representatives for their comment.

After considerable discussions with these four submitter parties, an agreement was reached on the recommended solution. The agreement was confirmed by these four submitters by individual emails on 30 June 2020. Waikato Regional Council staff wish to acknowledge the constructive and helpful way in which these submitters engaged in order to seek a solution.

Given the agreement, it is considered that the Clause 8AA resolution of disputes process concluded on 30 June. This is well within the 40 working day period allowed by the Direction. That period would have ended on 20 July.

Given that the disputes process concluded on 30 June, this Steps 1-5 report needs to be provided to the Minister by 14 July so that the report is provided within 10 working days of the completion of Step 5 as required by the Statement of Intent.

Appendix: Public notice for Plan Change 2

Public notice of Proposed Waikato Regional Plan Change 2: Taupō Overseer Version, using streamlined planning process

Sections 80B and 80C and Part 5 of Schedule 1, Resource Management Act 1991

1. Waikato Regional Council has prepared Proposed Waikato Regional Plan Change 2: Taupō Overseer Version. The Proposed Plan Change is to change Chapter 3.10 (Lake Taupō Catchment) of the Waikato Regional Plan to allow the use of updated OVERSEER versions.

2. Proposed Plan Change 2, as notified, comprises the following documents:

- Proposed Waikato Regional Plan Change 2 Taupō Overseer Version (strikethrough version of Chapter 3.10)
- Proposed Waikato Regional Plan Change 2 Taupō Overseer Version Section 32 Report
- Proposed Waikato Regional Plan Change 2 detailed technical explanation of changes

3. These documents are available on Waikato Regional Council's website:

www.waikatoregion.govt.nz/Taupō-overseer.

Subject to restrictions relating to COVID-19, copies of the reports can also be viewed at the Waikato Regional Council offices in Hamilton (401 Grey Street), Taupō (Cnr Titiraupenga and Paora Hapi Streets) and at all public libraries in the Waikato Region. Copies of the documents are also available on request by emailing healthyenvironments@waikatoregion.govt.nz. If you have any questions about the proposal, please contact Jon Palmer or Urlwyn Trebilco by emailing healthyenvironments@waikatoregion.govt.nz or by phoning 0800 800 401.

4. The following persons may make a submission on the proposal:

- a local authority, in its own area; and
- any other person, but if the person could gain an advantage in trade competition through the submission, then the person may do so only if the person is directly affected by an effect of the proposal that—
 - adversely affects the environment; and
 - does not relate to trade competition or the effects of trade competition.

5. Submissions must be in the prescribed form and are to be received no later than 20 working days following notification, that is, by **5.00 pm on 28 May 2020**. A submission form can be obtained from the Council website (www.waikatoregion.govt.nz/Taupō-overseer) or, subject to restrictions related to COVID-19, the Hamilton and Taupō offices of Waikato Regional Council.

6. You may make a submission by sending a written or electronic submission to Waikato Regional Council at any of the following addresses for service:

- **Email to:** healthyenvironments@waikatoregion.govt.nz or Fax to: (07) 859 0998
- **Mail to:** Chief Executive, 401 Grey Street, Private Bag 3038, Waikato Mail Centre, Hamilton 3240
- **Subject to restrictions relating to COVID-19, deliver to:** Waikato Regional Council, 401 Grey Street, Hamilton East, Hamilton or Corner of Paora Hapi and Titiraupenga Streets, Taupō

7. Proposed Plan Change 2 is following a Streamlined Planning Process (SPP) pursuant to Section 80B and 80C, and Part 5 of Schedule 1 of the Resource Management Act 1991. The Minister for the Environment's Direction for the SPP describes the required process and can be accessed on the Waikato Regional Council website: www.waikatoregion.govt.nz/Taupō-overseer. The process for public participation includes the following steps:

- Notification of the Proposed Plan Change and call for submissions.
- After the closing date for submissions, the Council will place submissions on its website.
- There will be no hearing. However, if requested, or on its own initiative, the Council will undertake resolution of disputes in accordance with clause 8AA of Schedule 1 of the Resource Management Act 1991 (to the extent applicable under the Minister's Direction). This disputes process is made available as there will not be a formal hearing of submissions.
- The Council will provide to the Minister for the Environment a written report showing how submissions have been considered and the changes (if any) recommended to proposed Plan Change 2: Taupō Overseer Version, in accordance with Steps 6 and 7 of the Direction.
- The Minister for the Environment will make the decision on Proposed Plan Change 2 and give reasons for the decision. There will be no appeal process.

VRJ Payne
Chief Executive, Waikato Regional Council
Date: 30 April 2020
Refer above contact details

www.waikatoregion.govt.nz

