

19 February 2010

Hon Tau Henare
Chairperson
Maori Affairs Select Committee
Parliament House
Private Bag 18041
WELLINGTON 6160

Dear Sir

SUBMISSION TO THE WAIKATO-TAINUI RAUPATU CLAIMS (WAIKATO RIVER) SETTLEMENT BILL

1.0 INTRODUCTION

- 1.1 Hamilton City Council (HCC) appreciates the invitation to make a further submission to the Maori Affairs Committee on the proposed Waikato-Tainui Raupatu Claims (Waikato River) Settlement Bill (referred to throughout this submission as the Bill).
- 1.2 HCC acknowledges the significant changes made to the original Bill by the Crown, in agreement with Waikato-Tainui. HCC is aware that in early 2009 the Minister of Treaty Negotiations expressed concerns around the working and efficiency of the Bill's co-management framework; resulting in the establishment of an independent review panel to review and report on co-management arrangements. It is evident from analysis of the December 2009 revised Deed of Settlement and the revised Bill, that this process has resulted in a much more streamlined and workable legislation for all parties.
- 1.3 However, we are extremely disappointed with the very short timeframe provided to make submissions. HCC received a formal copy of the revised Bill and an invitation to provide comment on it last Friday 12 February. One week is an inadequate timeframe in which to analyse and provide comment on a 138 page Bill and is counter to the principles of democratic decision-making.

1.4 Previous Submissions made by HCC

- 1.4.1 As the Maori Affairs Select Committee will be aware, HCC has previously made the following submissions to this process:
 - Restoring and Protecting the Health and Well-Being of the Waikato River - Proposed Vision and Strategy Consultation document (submission sent 23 May 2008).
 - The original Waikato-Tainui Raupatu Claims (Waikato River) Settlement Bill (submission sent 13 February 2009).

- 1.4.2 This submission focuses on matters that have been amended from the original Settlement Bill.
- 1.4.3 As outlined in its 13 February 2009 submission, HCC supports the Bill's overarching purpose of restoring the health and well-being of the Waikato River for future generations, with the focus being on using a co-management and co-governance approach.
- 1.4.4 HCC also trusts that the proposed changes in the revised Bill will protect and enhance the integrity of the August 2008 Deed of Settlement.

1.5 Key Features of the Revised Bill

- 1.5.1 HCC's submission focuses primarily on the following changes that have been incorporated into the revised Bill:
- Establishment of a single co-governance entity for the River - the Waikato River Authority.
 - The Vision and Strategy for the Waikato River will no longer have the status of a National Policy Statement, but will still be the primary direction setting document for the Waikato River.
 - The Vision and Strategy is to be incorporated directly into the Waikato Regional Policy Statement.
 - The \$210 million clean-up fund is still retained, but will now be administered by the Waikato River Authority.
 - Recognition of certain specified customary activities of Waikato-Tainui, in relation to the Waikato River.
 - Environment Waikato and territorial authorities are required to establish Joint Management Agreements with Waikato-Tainui for specified functions under the Resource Management Act 1991.

2.0 ESTABLISHMENT OF A SINGLE CO-GOVERNANCE ENTITY

- 2.1 HCC supports the establishment of a single co-governance entity for the River - The Waikato River Authority; replacing the previous arrangement that would have provided for five statutory boards.
- 2.2 This simplified approach will streamline the co-governance arrangement and provide a more efficient and effective structure.

3.0 VISION AND STRATEGY

3.1 Change to National Policy Statement Requirement

- 3.1.1 HCC supports the change in the Bill that removes the requirement for the Vision and Strategy to become a National Policy Statement (noting that the Vision and Strategy still prevails over any inconsistent provision in a NPS issued under Section 52 of the Resource Management Act 1991). As noted in HCC's 13 February 2009 submission, there are a number of National Policy Statements (NPS) currently under development by central government that address resource management issues related to the management of freshwater resources, which are directly related to the Bill e.g. the Freshwater Management NPS.

3.1.2 There are also various National Environmental Standards (NES) under development that address resource management issues related to water resources e.g. the NES on Ecological Flows and Water Levels (noting that this particular NES is still going through the development and finalisation process).

3.2 Vision and Strategy Review

3.2.1 HCC also has concerns around the review period of the Vision and Strategy. Part 2, Clause 13B of the revised Bill states that the Waikato River Authority must review the Vision and Strategy no earlier than five years and no later than ten years after the previous review.

3.2.2 Given the potential cost and resource impacts that a five year review would have on RMA planning documents (such as the Regional Policy Statement and District Plans), HCC is of the view that this clause be amended to a mandatory ten year review period.

3.2.3 HCC also envisages difficulty in practice with incorporating changes to the Vision and Strategy in RMA planning documents, given that the councils adjoining the Waikato River are at different stages of reviewing their district plans.

3.2.4 Part 1, Clause 9D of the revised Bill states that within six months of the Vision and Strategy being reviewed, local authorities must undertake a concurrent review of the Regional Policy Statement, Regional Plan and District Plans. This requirement is flawed, as there is no point in reviewing a regional or district plan before understanding implications of changes to the Vision and Strategy for the RPS. The Regional Plan and district plans take account of the RPS's underlying principles.

3.3 Section 32 Reports

3.3.1 HCC supports the inclusion of a specific statement on how the Vision and Strategy has been given effect to within RMA planning documents (Part 1, Clause 9F) but is of the view that such a statement would be more appropriately referenced in Section 32 Reports.

4.0 CLEAN-UP FUND

4.1 HCC supports retention of the \$210 million clean-up fund for the Waikato River and that it will now be administered by a single entity - the Waikato River Authority.

4.2 HCC acknowledges that there is also additional funding provision for the Waikato Raupatu River Trust, as outlined in Section 15 of the December 2009 Deed of Settlement.

4.3 However, HCC questions whether the amount of \$210 million to be administered by the Waikato River Authority over a 30 year period will be adequate to achieve the desired outcomes around the health and well-being of the Waikato River. For instance, has the Crown taken inflation into account with this amount, particularly given that the monies contested by parties is standardised at \$7 million per year over 27 years.

4.4 HCC requests confirmation that under Clause 6(4) of Schedule 2B councils will be eligible to apply for funding of projects that are considered worthwhile, but are not within existing budgets. While HCC's direct responsibilities for the river are relatively limited compared to those of EW, there may be occasions where

additional projects are considered to be beneficial for the health and well-being of the Waikato River.

5.0 CUSTOMARY ACTIVITIES

- 5.1 HCC has serious concerns over the implications that Part 2, Clause 30A(4) may have on a number of its key operations e.g. the resource consent HCC has with Environment Waikato to discharge stormwater and treated wastewater into the Waikato River. These types of activities cannot be compromised, as they are part of the essential services that HCC delivers to its community.
- 5.2 Part 1, Section 6 provides a comprehensive definition of the Waikato River and its catchment. Included in this definition are *"lakes and wetlands within the areas marked "A" and "B" on SO plan 409144"*. HCC notes that Lake Rotoroa ('Hamilton Lake') is situated within this area.
- 5.3 As the administering authority for Lake Rotoroa, HCC is concerned that the priority given to authorised customary activities outlined in Part 2, Clause 30A has the potential to cause conflict between competing activities.

6.0 JOINT MANAGEMENT AGREEMENTS

- 6.1 HCC supports the new provisions in the revised Bill (Clause 29) around Joint Management Agreements (JMA) and looks forward to liaising with Waikato-Tainui to develop effective JMA's. The principles outlined in Clause 29D for development and operations of a JMA are supported as a sound basis on which to develop a strong working relationship.
- 6.2 HCC also supports the provisions around dispute resolution if Waikato-Tainui and HCC cannot agree on matters during development of the JMA. However, the revised Bill does not appear to make provision for situations where a JMA has been agreed to and signed, and then when issues are being worked through, Waikato-Tainui and HCC cannot reach agreement around interpretation of matters such as operational and practical workability arrangements. The JMA needs to set out a clear and transparent process to address this situation if it occurs.
- 6.3 The provisions in Clause 29O, which provides for certain situations where a local authority may exercise powers or functions on its own, are supported. However, HCC is of the view that this clause be modified to include an exemption to local authorities from discounting RMA consent processing costs where failure to meet statutory timeframes result from a lack of timely input from Waikato-Tainui.
- 6.4 The Bill states that the local authority and Tainiu *"must convene a joint working party to discuss and recommend to the local authority the process to be adopted for the preparation, review, change or variation, and the general form or content of any document to be drafted for the purposes of consultation or notification before preparation."* HCC seeks clarification as to the implications of this and other JMA provisions when a local authority has already commenced a review of its District Plan.

7.0 WAIKATO-TAINUI ENVIRONMENTAL PLAN

- 7.1 As noted in our 13 February 2009 submission, HCC is of the view that the Bill needs to contain greater clarity around the purpose and content of a Waikato-Tainui Environmental Plan. Clause 28 of the revised Bill provides no further insight into the scope of this plan.

8.0 ENABLING GREATER UNDERSTANDING OF THE FINAL SETTLEMENT BILL

- 8.1 As stated in our 13 February 2009 submission *"HCC is of the view that a diagram showing the critical linkages and relationships between the various entities and plans outlined in the Bill should be included as a Schedule prior to its enactment. Currently it is unclear for many as to how the various entities and plans relate to one another. A clear and easy to understand diagram would go some way to rectifying this"*. HCC still advocates that this should occur.
- 8.2 In addition, given the comprehensiveness of the December 2009 Deed of Settlement, HCC is of the view that the Bill should be appropriately cross-referenced to the relevant parts of the Deed of Settlement. This would enable clearer interpretation of the intent of various sections and schedules in the final legislation e.g. the December 2009 Deed of Settlement provides a template to guide the establishment of Joint Management Agreements, yet this is not referenced in the revised Bill.

9.0 DEFINITIONS

- 9.1 HCC requests that Section 6 (Interpretation) of the Bill be amended to include a definition of "beds and banks". We note that Sub Clauses (b) and (c) of the definition of "Waikato River" include "the beds and banks" of the water bodies described in sub-paragraphs (i) to (iii).
- 9.2 "Banks" is not defined in the Resource Management Act 1991. "Bed" is specifically defined in the RMA and contains reference to "banks". We suggest that this may be an appropriate definition to use in the revised Bill.

10.0 COST IMPLICATIONS


- 10.1 As expressed in its 13 February 2009 submission, HCC does have concerns around the additional associated costs and workloads that local authorities will incur as a result of implementing the co-management framework.
- 10.2 Ratepayers should not have to bear the cost of councils having to comply with new obligations imposed by central government. It is recommended that national level funding/resourcing is required to support both the Deed of Settlement and the revised Bill if the new framework is to be adopted and implemented successfully - particularly as other iwi around the country are looking at the possibility of using the Waikato-Tainui River model.

11.0 CONCLUDING COMMENTS

- 11.1 HCC trusts that the points made in this submission are helpful to the Maori Affairs Select Committee when considering all submissions to the proposed Waikato-Tainui Raupatu Claims (Waikato River) Settlement Bill.
- 11.2 HCC **does wish to be heard** at the hearings to be held by the Maori Affairs Select Committee in support of this written submission.

11.3 If you require clarification of the points raised in this submission, or additional information, please contact Debra Stan-Barton (Special Projects Team Leader City Planning) on 07 838 6723 or email debra.stanbarton@hcc.govt.nz.

Yours faithfully



Michael Redman
CHIEF EXECUTIVE



Bob Simcock
HAMILTON MAYOR