

BEFORE THE INDEPENDENT HEARINGS PANEL
THE PROPOSED WAIKATO DISTRICT PLAN (STAGE 1)

UNDER the Resource Management Act 1991 (**RMA**)

IN THE MATTER OF A submission and further submission by TaTa Valley
Ltd on the Proposed Waikato District Plan
Topic 21b - Landscapes

BY **TATA VALLEY LIMITED**
Submitter

**REBUTTAL STATEMENT OF ADAM WILLIAM CHARLES JELLIE ON BEHALF
OF TATA VALLEY LIMITED**

Planning

Dated: 31 August 2020

BUDDLEFINDLAY
NEW ZEALAND LAWYERS
Barristers and Solicitors
Auckland

Solicitor Acting: **Vanessa Evitt / Mathew Gribben**
Email: vanessa.evitt@buddlefindlay.com / mathew.gribben@buddlefindlay.com
Tel 64-9-358 2555 Fax 64-9-358 2055 PO Box 1433 DX CP24024 Auckland 1140

1. INTRODUCTION

- 1.1 This rebuttal statement responds to the primary evidence filed by Waikato-Tainui and Turangawaewae Marae, and in particular the planning evidence of Mr Gavin Donald in relation to potential new provisions within the Proposed Waikato District Plan (PWDP).
- 1.2 I confirm that I have the qualifications and expertise previously set out in my primary evidence.
- 1.3 I repeat the confirmation given in my primary evidence that I have read the Code of Conduct for expert witnesses contained in the Environment Court Practice Note 2014 and that my evidence has been prepared in accordance with that Code.

2. EVIDENCE OF WAIKATO-TAINUI AND TURANGAWAEWAE MARAE

- 2.1 I have reviewed the primary evidence of Waikato -Tainui and Turangawaewae Marae and, in particular, the evidence of Mr Donald who has prepared the same evidence for each submitter. For ease, I refer only to Tainui in the balance of this statement when referring to both submitters.
- 2.2 Mr Donald's evidence has recommended the introduction of an Outstanding Cultural Landscape overlay and/or identification of the Waikato River and its margins as a Maaori Area of Significance in the PWDP¹. Mr Donald states that this planning response is to address the Maaori cultural values of the Waikato River and its margins, as identified in the evidence of Mr Antoine Coffin on behalf of Waikato-Tainui².
- 2.3 Mr Donald has recommended a proposed approach to further recognise and protect the values of the River but has acknowledged that the provisions should be further developed and then implemented in the PWDP. The process for developing the provisions is unclear, and I return to that issue later. For reference, I summarise the potential provisions identified in his evidence below:
 - (a) Spatial identification of the river and its margins as an Outstanding Cultural Landscape and/or Maaori Area of Significance in a schedule and on the planning maps. This is indicated to extend 32 m from the river;

¹ Para 10.3, Statement of Evidence of Gavin Rhys Donald, Landscapes Chapter Hearing, 21 August 2020.

² Para 10.3, Statement of Evidence of Gavin Rhys Donald, Landscapes Chapter Hearing, 21 August 2020.

- (b) Inclusion of the 10 values identified by Mr Coffin, in a Schedule to the PWDP³;
- (c) Objectives and policies articulating protection and restoration of the Maaori cultural values of the Waikato River;
- (d) A Discretionary Activity rule for new activities, buildings, earthworks and subdivision within the identified Outstanding Cultural Landscape;
- (e) Provisions controlling surface water activities;
- (f) Matters of discretion to capture Waikato-Tainui values within the Waikato River catchment;
- (g) Information requirements to include the provision of cultural value assessments and the requirement for these to be commensurate with the scale of a proposal and its associated effects; and
- (h) Information requirements specifying applicants address the Waikato-Tainui Environmental Plan as it relates to a proposal. These two should be commensurate with the scale of the proposal and its associated effects

3. RESPONSE

- 3.1 I acknowledge at the outset the high cultural values of the Waikato River and its significance to Tainui. Ms Favell describes how "*Respect for Te Mana o Te Awa is at the heart of the relationship between the tribe and our Awa Tupuna (ancestral river)*"⁴.
- 3.2 From a planning perspective that relationship is recognised in Te Ture Whaimana o Te Awa o Waikato / the Vision and Strategy, which is one of the primary higher order policy documents affected the Waikato District and the PWDP. I understand that Plan Change 1 to the Waikato Regional Plan is one of the primary means by which the Vision and Strategy is being implemented and water quality in the River is improved over time.
- 3.3 Given this strong policy direction, I acknowledge that the River and its relationship with Tainui needs to be recognised in the PWDP. However, at this stage, it is unclear what are the most appropriate planning provisions to do so. The potential provisions outlined by Mr Donald could have a material impact on TVL's sites and other many

³ Para 30 , Statement of Evidence of Antoine Nelson Coffin, Te Awa O Waikato – He Piko He Taniwha, 21 August 2020.

⁴ Para 4.1, Statement of evidence of Donna Flavell, 21 August 2020.

other properties and activities through-out the district, but at this stage are not fully developed.

- 3.4 I note as a general observation that based on the original submissions filed by Tainui, TVL did not anticipate these types of provisions arising in Topic 21 and so has not had an opportunity until now to consider the provisions now proposed.
- 3.5 Whilst I don't necessarily disagree with what Mr Donald is proposing in principle, in my view further detail regarding the specific planning provisions is required before TVL could confirm whether it support or oppose the approach and whether in my expert opinion the planning provisions are appropriate.
- 3.6 I set out below a number of matters where I consider further detail is required:
- (a) What is proposed to be the spatial extent of the Outstanding Cultural Landscape Overlay? For example, is this proposed to be limited to the main stem of the Waikato River or does this extend to all tributaries? If it's just the main stem of the River, then the spatial extent of the proposed overlay is greatly reduced and may have less impact on private properties;
 - (b) What activities does Mr Donald propose to be Discretionary Activities within the Overlay? In my view, consideration could be given to a lesser activity status for certain activities which will not impact on the cultural value of the River and its margins;
 - (c) What activities are proposed to be controlled on the surface of the Waikato River and what form of control is proposed?
 - (d) What specific matters of discretion are proposed to apply to activities within the Waikato River catchment, and what activities are proposed to be captured by this addition?
- 3.7 In my view, the Panel will also need to consider the following issues when considering the approach outlined by Mr Donald:
- (a) In terms of the proposed River overlays, identification of other reasonably practicable options, and whether identification of the Waikato River as an Maaori Area of Significance and/or Mr Donald's proposed Outstanding Cultural Overlay are appropriate methods compared to those alternatives. This will largely depend on the associated provisions, the detail of which has yet to be provided;

- (b) Consideration of whether the district-wide restricted discretionary activity (RDA) provisions proposed will become an administrative burden for Waikato District Council, Waikato-Tainui or landowners. It may be more appropriate for this control to attach to RDAs, which could have potential effects on the River and its values; and
- (c) If there is to be a matter of discretion included on some RDAs regarding potential impacts on the cultural values of the River, the related assessment criterion could require an assessment against the Vision and Strategy, which is recognised through the RPS. This would provide consent applicants with greater clarity on the type of assessment required as opposed to an information requirement to address Waikato-Tainui's environmental plan, which does not have the same regulatory status.

4. CONCLUSION

4.1 Given that the hearing of Topic 21 has been delayed until New Zealand returns to Covid-19 Alert Level 1, I consider it would be beneficial for the Panel and other submitters to have the opportunity to consider the following further information, prior to the hearing:

- (a) The detail of Tainui's proposed River overlay plan provisions, including mapping of any overlay or set back and wording of objectives, policies and rules; and
- (b) A further evaluation of the additional provisions in accordance with Section 32AA of the RMA.

4.2 TVL would like to be involved in any future process to advance the proposed approach. Finally, I note that TVL are currently engaging with several iwi groups, including Waikato Tainui and Turangawaewae Marae, in relation to its tourism resort consent applications adjacent to, and on, the River. As part of that forum, TVL would welcome the opportunity to discuss, as an alternative approach, site-specific PWDP provisions to recognise the significant cultural value of the River and could present these to the Panel as part of the upcoming rezoning hearing processes.

Adam William Charles Jellie

31 August 2020