

BOARD OF INQUIRY
Proposed National Policy Statement
for Freshwater Management

**HEARD BEFORE JUDGE D SHEPPARD (CHAIR), MR K PRIME,
DR J HARDING AND MRS J VERNON, MEMBERS OF THE BOARD**

THURSDAY 17 SEPTEMBER 2009

**HELD AT THE SUNCOURT HOTEL & CONFERENCE CENTRE,
14 NORTHCROFT STREET, TAUPO**

HEARING OPENED [9.33 am]

APPEARANCES

Mr J Fergusson, Mr T Pitiroi and Mr D Loughlin Tuwharetoa Māori Trust Board

Audio file: dpm 0152

RESUMED [10.35 am]

CHAIR: This morning the Board of Inquiry is going to hear the submission from Tuwharetoa, which we're looking forward to. And we invite the representatives of Tuwharetoa who are to present today to identify

themselves, we understand that they wish to start with some Mihi perhaps, and feel free to do that. And then we're going to see some graphical material, I believe, and then perhaps it will be time for morning break.

MR PITIROI: (Mihi).

MR PRIME: (Responds in Māori).

MR FERGUSSON: Your Honour, Members of the Board, my names Jamie Fergusson, from (inaudible) legal, and I'm the legal council for Tuwharetoa Māori Trust Board. I'm taking a lead in terms of the presentation of this submission. We just heard the introduction from Te Kanawa Pitiroi, Trust Board Member and also sitting next to me is Danny Loughlin, who's also a member of the Trust Board. As your honour indicated in the outset, that Mr Pitiroi will present a PowerPoint presentation which really provides an overview of the customary relationship between the Tuwharetoa and – by Māori and the genealogical interconnections in that regard, so that should take us through to a convenient time to break. So if I could just hand things over to Te Kanawa.

MR PITIROI: Tena kotou. I usually do this all in Māori so this is only the second time I've done it in English. To us water is very, very important, that's obvious, because we have our lake here - freshwater lake which is the largest in the southern hemisphere. But not only that, we have all the rivers that flow into it as well from the mountains in the south and from the east, from the west right down to this area, to the Taupo area which we call the tail of the fish Te Hikuwai (ph). And this is our version, and I dare say it's not that much different to most Māori in Aotearoa, there might be variances but this is our version. (inaudible) cloak of Mother Earth. Now, we're no different to the modern versions, (inaudible) these days. The clouds are the cloak of Mother Earth, they are sent forth from Mother Earth in the form of evaporation that forms in the clouds, and up

here we have two (inaudible), that clothe Ranginui, the Sky Father, with the clouds that are sent by (inaudible) and Mother Earth. These two in the past were together as partners, and they were separated by one of the sons, that's why Mother Earth is standing here and Sky Father isn't part of the chaos. Now Tawhirimatea shifts the clouds around on Ranginui and re-arranges this cloak up on Raninui on a daily basis, hourly basis, minute by minute and he's assisted by Tukapua, another God if you like, that shifts the clouds around and change colours as well, different times of the day, and that comes from Mother Earth. Now, when it rains, the Sky Father – those are the Sky Father's tears and come back down and returns to Mother Earth, and so (speaking Māori) is tears of the Sky Father Rangi that return to earth.

Down here we have a (inaudible) which is our guardian of freshwater, that is very important for us too.

This is the explanation in English, the (inaudible) cloak of (inaudible) Ranginui's tears of love, that's the rain that comes down, and the clouds, they go up and swim. (inaudible) is the guardian of freshwater, that can be seen by the genealogy (inaudible) and Tane for the parents ((inaudible)

[10.45 am]

So we have Ranganui, Sky Father, Papatūānuku the Earth Mother, they had 70 sons, Tane being one of them and Tane (speaking Māori) and the old spring was left (inaudible) guardian of freshwater.

(inaudible) Papatūānuku produces evaporation and (inaudible) the house of Tukapua, guardian of the clouds, the clouds are a sacred gift from the Papatūānuku the Earth Mother to her husband Ranginui, The Sky Father. It is the duty of Tukapua and Tawhirimatea, two gods if you like, the guardian of wind, Tawhirimatea being the guardian of wind, to have raised a sacred cloak upon Ranginui each time man looks skyward the cloak

takes on a different form and colour. Tukapua, the guardian of (inaudible) is a (inaudible) (speaking Māori), the guardian of rain is a mischief maker that forever sees an opportunity to cause trouble on Tukapua in order to release rain. Whenever he sets out some seeds, the water will come in the form of tears which contains the (inaudible) Ranginui (inaudible) Papatūānuku and also returns to the the guardianship of (speaking Māori).

(Speaking Māori) as I said before its very important to us, it's a sacred cloak of the (inaudible). It is weaved from the many rivers that flow into it, there's the southern end, which is the (inaudible) or upper end into the (inaudible) is the sacred pattern that sits closest to the (inaudible), the head being the most sacred part of the human body.

The sacred cloak starts on the sacred mountains (inaudible) tapu; it flows down on the slopes of the mountains called (inaudible). Now Tuwharetoa in the past, Waikato - or even now, Waikato starts on the mountains, not over here. So Waikato (inaudible) comes down the slopes of the mountains into the Tongariro River, then from Tongariro River it flows into the southern end of Lake Taupo, (speaking Māori) which simply means the source. And that is what we call a band of (speaking Māori) that's on the southern end of the lake, that's called (speaking Māori). And that's weaved by the sacred waters that come down from the Tongariro mountains.

Once they get the water into Lake Taupo, the rivers that flow from the east and the west of the Lake Taupo, those are the waters that come from the sub tribes of the east and the west and they help to weave the cloak, and that is known as te kura wai tapu (ph) (speaking Māori). That's the same explanation as I've just given you.

One thing we are very careful of, and hapu are very careful as well, is to ensure as much as possible that the waters that flow into the lake are as clean and pure as possible.

There's a (inaudible) in the water that goes into the Lake, or the sacred cloak, then the weaving becomes (inaudible). And that's what I've just - and eventually the waters of course are released into Waikato River.

We have a saying (speaking Māori) Tongariro (speaking Māori).

And this is just a graphic display of what I've just talked about, here's our mountains in the back there and I think Bubs may have took the photograph, that's been included here. These are the waters that trickle down from the mountains, flows into Waikato (inaudible) and then into the Tongariro. And there's the sacred cloak there, it's the sacred (inaudible) I talked about, (speaking Māori) and these are the rivers that flow from the east to the west to help weave the cloak, and then she flows into Waikato River over here.

I use this resource to teach our students at school, but it's all done in Māori. I find that students learn better when you attach names like the given names to them, (inaudible), rather than scientific names, they seem to remember the stories better, and its more interesting for them.

Māori personified everything, and I don't think it's no different to any other iwi in Aotearoa.

These are some examples of personified (inaudible) water h₂O, Tukpua guardian of clouds, (inaudible) guardian of rain. (inaudible) guardian of rock, those are examples.

Any questions?

MR PRIME: No I don't, it's very clear to me, I understood it all, so I don't really have any questions, I understand the full concept and I guess most iwi throughout the country would have similar stories pertaining to the water, nature and the same mountains and so I don't have any questions. I'm familiar with the stories (inaudible).

CHAIR: Right shall we take a break now, and when we return you're going to present some submissions are you? Thank you, Mr Fergusson.

ADJOURNED [10.53 am]

RESUMED [11.13 am]

Audio file: dpm 0152

CHAIR: Mr Fergusson?

MR FERGUSSON: I should ask are you content for me to sit and present my submission?

CHAIR: Yes.

MR FERGUSSON: I apologise for not seeking that approval earlier.

CHAIR: That's all right.

MR FERGUSSON: The Board has the written submission that was lodged by Tuwharetoa Māori Trust Board. What I intend to do is take the Board through that submission. There's the odd minor interpolation, but by in large we're not proposing to add significantly to that. There are just a couple of additional contextual matters that I'll note expressly as I go through.

Now the Tuwharetoa Māori Trust Board is the mandated representative authority for the iwi of Ngāti Tuwharetoa. Lake Taupo and its rivers, tributaries and waters are significant taonga tuku iho or ancestral taonga of Ngāti Tuwharetoa.

Ngāti Tuwharetoa is linked by whakapapa to these taonga tuku iho. Through these familial links, Ngāti Tuwharetoa is committed and bound to protecting and nurturing the Mauri of these taonga. And as you would have seen in the presentation from Te Kanawa, that those water flowed from Tongariro, Te Mangatapu(ph), through Waikato iti (ph) into the Tongariro River, which was formerly called the Waikato also, into Lake Taupo – Taupo-nui-a-Tia, and then through again into the Waikato River proper as it's referred today. And then the various tributaries within that area.

Ngāti Tuwharetoa is recognised by the Māori Land Court as the ancestral owners of the Tongariro/Taupo region of the North Island. By rulings of the Māori Land Court in 1887. And those ancestral connections to those taonga is reinforced by the fact that the Board now is the legal owner on behalf of Nga Hapu Tuwharetoa of the beds at Lake Taupo and its tributaries. This ownership was confirmed by deeds of ownership made between the Crown and Ngāti Tuwharetoa in 1992, and then recently revised or refined in 2007 further deed.

In essence, those deeds interpolating here rectify the anomalous situation that arose in the two pieces of legislation in the 1920s, which involved ownership of the bed of the Lake, where it was supposed to be set aside as a reserve and the Crown didn't fulfil that obligation and ultimately the matter was resolved in 1992 with the present change. That includes all of Lake Taupo. The tributaries at the Tongariro river flowing in, and also the Waikato River north as far as Te Pukatea (ph) or Rokatea (ph), which is just a few hundred metres north of Huka Falls.

For those of you familiar with the arrangements in relation to the Waikato Tainui Waikato River settlement, and I understand the Board has had a presentation from Waikato Tainui in relation to that. The boundary for that

- that arrangement is the legal ownership of boundaries of Ngāti Tuwharetoa. So Te Pukatea (ph) is the boundary for the parameters of that settlement in so far as it relates to these waters.

Ngāti Tuwharetoa is a significant land owner within the rohe, and effectively owns 56 percent of grazeable land in the Taupo district. Much of the multiply owned land in the district is also invested in Trust and Incorporations of Ngāti Tuwharetoa, and principal uses include production, forestry and farming. Though much land is still undeveloped within the rohe, Ngāti Tuwharetoa reserves the right in perpetuity to advocate for the facilitation of options, and the development of sustainable opportunities in respect of all undeveloped or underdeveloped lands which may provide benefits to specific hapu and the iwi as a whole.

In terms of general comments in relation to not simply the National Policy Statement, but the framework in which it has been developed in recent times, Ngāti Tuwharetoa supports any central and local government initiatives whose express aim is to improve and sustain fresh water quality for all of New Zealand, now and in the future. Such support is provided on the basis of the Board and the iwi of Ngāti Tuwharetoa maintain and expect to continue to engage with the Crown in relation to their customary and other rights to water and water allocation.

In this regard, Ngāti Tuwharetoa has over the last two years been actively engaged alongside the iwi of Waikato, Tainui, Te Awaroa (ph) and Wanganui and I'll also add to that and Ngāi Tahu as the fifth iwi as part of that group, in a joint work programme with the Crown in the context of the former Labour Government Sustainable Water Programme of Action or SWAPA (ph). The proposed Fresh Water National Policy Statement formed one part of those initiatives, and the form and intent of the draft National Policy Statement is supported in principal by Ngāti Tuwharetoa.

I just add in that regards by way of context, obviously we now have a new set of policy initiatives by the new National Government under the new label, “Fresh Start for Fresh Water”, I think is the phrase. Those arrangements involving those five iwi, which were high level leadership engagements with senior members of the Labour Government have continued and been reconfirmed by the Prime Minister in relation to the National led Government. And the engagement is continuing to occur.

By way of clarification, because there has been some speculation about this, the five iwi are not there purporting to represent all iwi in New Zealand. They’ve made that expressly clear to the Crown, that they do not have that representative capacity. And while they do regularly report back to wider iwi forums, they do not see their position as usurping the mana or responsibilities of any other individual iwi the Crown has a treaty relationship with.

The second point in relation to that engagement is that it’s been made again expressly clear to the Crown and others that despite rumours to the contrary, there is not an engagement on a national settlement of water claims through that group. The focus of the engagement has been on the legislative and regulatory framework, and the proposed reforms to that framework in relation to fresh water, of which arguably this National Policy Statement forms one part of. As members of the Board will undoubtedly be aware of, through various other forums in which you appear, issues in relations to the regulatory framework as it affects fresh water and waterways has been hugely problematic for iwi. Many claims brought and grievances pursued in relation to breaches of the Treaty of Waitangi and arguments about the adequacies or inadequacies, depending on one’s point of view of the Resource Management Act and other current tools and various findings adverse to that.

I suppose the challenge for the five iwi that are engaged at that higher level, including Ngāti Tuwharetoa, is really to provide constructive input in a way that so far as possible mitigates against the new Government perpetuating the inadequacies of a regulatory or legislative regime on fresh water. So it's not designed to redress past grievances, but really designed to ensure that if a new regime is coming in, of which this may be part of the National Policy Statement, that it is so far as possible, sensitive to the rights and interests of iwi (inaudible) and provides appropriately for the recognition of their values and interests and appropriately for their role in decision making etc.

One of the great sensitivities of course around this is the creation of property rights. That's well beyond the purview of this Board. Probably thankfully I imagine. But there's a great sensitivity in relation to that as well. And there's not so much about providing for iwi in any form of property right regime, which is what was being speculated about, but we are trying to ensure so far as possible that there are new property rights created of a permanent nature in any new water allocation or water regulatory regime that would be adverse to the rights of (inaudible).

[11.23 am]

In effect, Ngāti Tuwharetoa and the other iwi are attempting to keep that ownership or title box out of the regulatory debate as far as possible, because it triggers another whole set of issues that may ultimately detract from rather than assist in the resolution of matters going forward from this forum and other similar forums. So that's the context of that engagement. And that support is ongoing and that engagement is ongoing. And obviously this National Policy Statement development is one part of that, but there are a range of other active initiatives across a range of

government departments and a number of work programmes under which Ngāti Tuwharetoa and those other iwi are involved at a high level, in terms of input.

The context of that, when one moves on further through the submission, is obviously through that engagement there was some input at an early stage of the draft NPS preparation, and some amendments were made at that time as a result of submissions made through that high level engagement and those are noted in submissions, and we'll deal with those in further detail later on just by way of confirmation.

Returning back to the submission at paragraph 8, Ngāti Tuwharetoa believes that the effect of the soundness of the proposed National Policy Statement should benefit Ngāti Tuwharetoa and all New Zealanders and enhance environmental policy in New Zealand. However, several matters are required for that benefit to be realised: First, the Fresh Water National Policy Statement must not be subsumed or overridden by any current or future National Policy Statements to the extent that they might also impact upon the issue of quality or quantity or management of fresh water resources.

Just interpolating there, that obviously there is some sensitivity around potential National Policy Statement developments in relation to energy, and the potential tensions through the promotion of arguably sustainable hydro-electric development or expansion on that, and the potential adverse effects that they do have in many instances on waterways in terms of their hydrology and therefore ecology and habitat in many instances. And so that question about the balance in between National Policy Statements is a live issue. One of the concerns – as the Board will also have heard from Waikato Tainui, there's obviously a sensitivity there in relation to the status of division strategy by the Waikato Tainui

settlement, which is - currently under that settlement as proposed in the Bill at least, to have the status of a National Policy Statement. And again there's an issue there about where that stands relative to another National Policy Statement such as this one. Tuwharetoa also has an interest in that because of its interest in the upper part of the Waikato River, and it is represented on the guardians body that's been established under that settlement, and also supports that mission and strategy for the Waikato River, namely its restoration and protection for the benefit of future generations – health and well-being of the river for the benefit of future generations..

The second point, just that the Fresh Water National Policy Statement is only one aspect of a wider suite of tools, including but not limited to National Environment Standards that have or could be utilised to sustain and protect and improve the management of fresh water and fresh water resources in New Zealand. The proposed National Policy Statement needs to be complimentary to and supported by those other initiatives.

Again, just interpolating there, obviously the Board has an important role in relation to this National Policy Statement. Tuwharetoa emphasises the importance of viewing the National Policy Statement, and particularly amendments to it, given that the broad position is one in support of the current draft statement; to be sensitive to those wider implications and those other reforms that are going on. I suppose the broad message is one of counselling caution before making wholesale amendments that might impact upon other areas that are currently under reform.

And thirdly, the third point. Issues regarding Māori or iwi rights and interest in fresh water and any association resolution between iwi including Ngāti Tuwharetoa and Crown matters that remain to be addressed, as I've already indicated. But those to be addressed at a later

date in forums and dialogues separate from this submission and the present National Policy Statement process. And those matters are being progressed separately with the Crown through existing longer processes.

Ngāti Tuwharetoa also believe strongly that co-management regimes for the allocation and use of conservation of fresh water resources are preferable to those run by the Crown on its own, or solely by regional councils and territorial local authorities. The promising development of a co-management regime for the clean up of the local river, as I've indicated is a recent example of this, as is the joint management agreement recently entered into between the Board and the Taupo District Council.

Ngāti Tuwharetoa desires more endeavour on the Crown's part to secure enduring, unlimited co-management regimes with iwi such as Ngāti Tuwharetoa in order to protect, utilise and improve the quality of freshwater bodies within our rohe and those of other areas.

Just adding there, it's not insignificant that despite the fact that those relevant provisions have been in the Resource Management Act for a few years now, the joint management agreement between the Tuwharetoa Māori Trust Board and the Taupo District Council is to my knowledge the only joint management agreement that has been entered into by any regional council in New Zealand, and even in that case it's only limited to resource consents on Ngāti Tuwharetoa land, it doesn't apply generally. But we'll return to that point and the opportunity that potentially does exist to support, I think, similar mechanisms within this NPS, or rather the submission would be that some of the mechanisms within the NPS could be greatly enhanced in terms of their delivery if regional councils were more open in their embrace of some of those mechanisms, those tools that are available under the Resource Management Act and integrating iwi within some of those decision-making processes.

In terms of turning to the specific provisions of the National Policy Statement as proposed, first and foremost Ngāti Tuwharetoa expects the Crown to preserve the reference to te tiriti o Waitangi within the preamble of the draft statement. That's a crucial reference point to its ongoing partnership with Māori throughout the motu (ph). In addition, Ngāti Tuwharetoa had input, as I indicated earlier, through discussions between Māori advisors – Māori advisors in that regard are the Māori technical group that supports the iwi leaders from the five iwi who are engaged with the Ministers. So at the technical level engagement between Māori advisors and Crown officials on an early draft of the National Policy Statement before the Board was established, and certain provisions that are now contained in the draft Policy Statement are as a result of that input, and so a number of those specific changes that were made Ngāti Tuwharetoa wish to ensure that they are maintained in the final National Policy Statement. And there are specific additions and insertions and there is one deletion are as follows. And I think these will be consistent probably with the submission that you received from Waikato Tainui who were also party to these changes, but just stepping through them. In relation to paragraph 5, it's not numbered, but fifth paragraph of the preamble which relates to the Treaty of Waitangi clause, if one calls it, this is a paragraph within the preamble. In fact, there was among the earlier iterations the Treaty, the Treaty of Waitangi, the paragraph was actually removed altogether and there was strong advocacy for that to be reinstated and it was. The important words that were added are the ones highlighted in bold in the submission which talks about the addressing of tangata whenua values and interests including the involvement of iwi and hapu, and that's an important addition that was put in and really was directed to trying to ensure appropriately, when one is talking about freshwater and freshwater bodies, adding in to the submission here, when one is talking about freshwater and freshwater

bodies with waterways, one is talking about assets that are within the customary rohe or territory of particular iwi or hapu groupings, descent based groupings. And they have unique relationships with that water and those waterways and hapu and I suppose in the more contemporary sense, iwi are the collective Treaty partner of the Crown in that regard. And the point of emphasising iwi and hapu was to avoid the tendency which does happen when one is talking about tangata whenua in a general sense it becomes - sometimes easily slips into a generic term, referring to (inaudible) Māori generally rather than the individual iwi and hapu of Aotearoa and viewing as a homogenous Māori view on water, and while there are enormous commonalities of viewpoints, as Mr Prime indicated in response to Te Kanawa's presentation, there are also important differences and important distinctions in terms of those relationships that need to be maintained.

[11.33 am]

We also have the reality that with regards to where things may have been heading in the 1960s, 70s and early 80s, there is a huge shift occurring in terms of the economic base of iwi through this treaty settlement process; they are becoming very real players in local economies and in terms of resource and asset ownership. So their interaction with water and waterways not only is a customary one, but is leaning towards being a commercial one as well. So, to cover that whole spectrum it's quite an important focus that needs to be viewed on a regional basis, not simply as a generic one-stop Māori solution. So that was an important addition to have those words in there to make sure that focus wasn't lost.

In terms of Objective 3 in the submission, it says through the preamble, the words of the preamble should be deleted, it's just Objective 3 of the proposed National Policy Statement. This relates to the quality issue to

ensure (inaudible) freshwater resources can reach or exceed a swimmable standard. The words “or exceed” were added in as a result in part at least of the submissions made at the early draft stage on the basis that that standard should be enhanced beyond can really reach swimmability. Swimmability seemed as we indicate later on, a somewhat I suppose unquantifiable notion certainly in the view of Ngāti Tuwharetoa and certainly I imagine wouldn’t be for example something that would apply to the (inaudible) River, it’s not a standard that one would be trying to achieve, I would envisage. But that a more quantifiable standard would be appropriate, so in lieu of trying to challenge swimmability, which at that stage I think was very much in the mind of the then Ministry for the Environment, may have been the genesis of that phrase, the words “or exceed” were inserted in there to reflect the fact that iwi including, Ngāti Tuwharetoa, felt that where at all possible that standard should be bettered.

In terms of Objective 6B, the additional word added in there was the word “biophysical”. The section to the need to provide the resilience against the effects of climate change as such as the infrastructure that supplies the distribution of fresh water. The word “biophysical” is an important addition. One of the concerns that the iwi group have here, and I’m adding in, was that if it simply read “the effects of climate change”, there was a potential for some of the financial implications etc of climate change being argued by imaginative and articulate lawyers to be within the scope of that, therefore potentially being used to advocate for certain forms of energy generation over others and pointing to this as the means for that. It was clarified by those officials who were involved that that wasn’t the climate change that they were intending so the proposal to add the word biophysical to show that there is those ecological and environmental effects that were to be provided against.

Moving on to Objective 8, this is the general clause relating to the role and involvement of iwi and hapu and tangata whenua values and interests. As it was originally drafted, it was simply a standalone clause that didn't have the final rules including the matters specified in Objectives 1 to 7, so it was simply a standalone Objective 8 and the view in that regard it was very much a concern that once again I suppose, from the iwi perspective, they were being put into a particular box, and so you had all these various objectives dealing with a range of other issues and then you add the iwi, hapu, tangata whenua roles put in a separate box. And the point that was made quite strongly was that in fact iwi and hapu views and values aren't simply compartmentalised in that way, but in fact are appropriately viewed in all of those earlier objectives as well. And so that cross reference was very important because experience unfortunately had been - has been in many cases, that those rights and interests when they are put into a separate section often become a significant balancing exercise where recognition of such interest in planning documents is put simply into a Māori section often when comes to implementation are weighed against all the other matters and are often ignored as being less important or at least outweighed by other economic and social values. And the point here to try and ensure that those - that involvement and those values and interests actually are also economic in nature, they are also social and recreational and there are all of those aspects of it, points of equality. Iwi have views and rights and interests and values in relation to all of those areas, so trying to keep that more integrated approach across all of the objectives.

In terms of Policy 4D, in the policy section, this is one that had a deletion when it was talking about having regard to the contribution of existing and potential uses of freshwater resources and existing economic investment to regional and national social, economic and cultural wellbeing there were the words after "existing potential uses" in brackets "including electricity

generation". Again, the concern there from the iwi group including Ngāti Tuwharetoa was that that was an - unnecessarily highlighted one stakeholder, one interest potential use of freshwater resources and that there didn't seem an appropriate rationale for that. And if one was going to say "including electricity generation" then to be fair, all the other key usages should have been there as well which includes customary use and agricultural use and recreational use should all have been listed there. So, the view was that no one particular issue should be highlighted in relation to that policy.

In relation to - finally in relation to National Policy 6 in terms of the particular matters that were changed through that, and there is a typographical error here in paragraph (f) in this part of the submission, the proposal there was that it was redrafted with the words "as far as practical and appropriate" were replaced with "inappropriate" rather than "less appropriate", it's correct in the quote below but there's a typo there it should be "inappropriate". Again, the change that was indicated there was to try and do two things: 1), we thought that the addition of the words that were there "as far as practical and appropriate" really provided a discretion that went beyond the true outcome sought by the NPS in terms of it added a practicality that raised all kinds of financial and other logistical issues, rather than one driven solely by the environmental concerns that should underpin this freshwater policy statement.

Secondly, changing to "less inappropriate", also reversed the onus so the presumption was that it would apply unless it was inappropriate to do so, rather than the other way around and apply only where appropriate and that change of emphasis was seen to be important.

In addition to those matters that, as I say, were changed as a result of earlier submissions, so a little bit of movement at an early stage, but

obviously Ngāti Tuwharetoa is conscious that there may be stakeholders and others out there that are advocating changes that might see the restoration of those words or words to similar effect and that's why it has been emphasised in that part of the submission.

But in addition, Ngāti Tuwharetoa make the following remarks in terms of particular other (inaudible) and policies. Firstly, (inaudible) this is going back to Objective 3 that I commented on earlier about swimmability, Ngāti Tuwharetoa believes (inaudible) of Objective 3 should be to make all significant freshwater resources drinkable, rather than swimmable. Swimmability is not a sound environmental measure in our view and is far more subjective in terms of agreed standards than drinkability is. Again, the broad point there is a more defined and quantifiable standard than swimmability. I'm not sure how one would measure swimmability as such, and also a higher standard as well, in terms of (inaudible). And the long-term aspiration certainly should be drinkability, albeit that might that ultimately be an inter-generational solution.

[11.43 am]

Then in terms of Objective 5, in relation to Objective 5, which relates to addressing freshwater degradation. The objective in its current state, this is a very simple one, to control the effects of land use development and discharge the contaminants to avoid further degradation of freshwater resources. Tuwharetoa believes that that does not provide enough guidance to policymakers in regional and local government for creating core creative incentives for immediate remediation and mitigation of the effects of land use on degraded and outstanding freshwater resources. And the point is made that another objective which captures current and historic use and its present cumulative effects would be better than the current one. In effect, Objective 5 seems to be a status quo, it's not

necessarily directed to improvement but rather to avoid further degradation, and Ngāti Tuwharetoa is firmly of the view that we need to go further than that as a nation and the current situation with many waterways in New Zealand is unacceptable and there needs to be some incentives and policy direction required in relation to remediation and mitigation. That's what's occurring under the proposed Waikato river settlement, which is reflected in the initial words that are already in place and being rolled out in terms of Lake Taupo and nitrogen and those should be in terms of freshwater degradation much more active and standard there; much more active objective that looks at trying to regain ground rather than just maintain the status quo.

In terms of paragraph 15 in the submission, some comment in relation to Policies 1(d), (e) and (f), which are policies that are directed to, I suppose, the engagement of iwi and the role of district and regional councils and district regional plans in relation to iwi and hapu interests and tangata whenua values and interests. At one level it's good to see all those types of things in there, but I suppose the concern for iwi in many respects is the cost of this in terms of identifying these (inaudible) interests and the concerns around providing sensitive information to local government, where those costs are probably at the present stage at least is to be largely borne by hapu and iwi, or by their mandated authorities. Some iwi one might say are in a position to bear such costs, many others are not, particularly those that haven't yet gone through treaty settlements, but there is a broader issue here about how it's all very well putting in these requirements, and council have the resources through ratepayers' rates and other inputs and capacity to provide this information quite readily, it is or can be a heavy burden on iwi and are sensitive to that. And it's not clear how central and local government will assist iwi and hapu in meeting those costs. Certainly financial and technical support would be of assistance to iwi. Such support is generated in the formulation of

documents such as long-term council community plans and annual plans. Now, at the end of the day, it's probably - it's not something where the National Policy Statement can really address those issues but it's an important context to the fact that these types of policies, while well-intentioned, do have parallel consequences and really the Board can note those and really it's a note to Crown that really there needs to be better provision for how practically these things are rolled out on a regional basis and where the costs lie in relation to that. Certainly Ngāti Tuwharetoa will vigorously advocate that approach in the event that those policies, and some of the other ones as noted are adopted within the statement.

One of the points that I made earlier in relation to the joint management agreement that the Ngāti Tuwharetoa has with the Taupo District Council, was the fact that it would be a great advantage in the submission that if these types of policies are coming into force as part of the National Policy Statement for there to be a greater onus whether voluntarily or a prescription on regional and local authorities to actually work with iwi to actually formalise how these processes will work and how information will be shared, how the councils can assist in that process in terms of resources, how appropriate confidentiality can be maintained. And the joint management agreement is one vehicle in which all those matters that form a range of relationships can be captured in terms of the functions - relevant functions of the district and regional councils. It could be formalised and there wouldn't be this feeling of two separate bodies grappling with their own rights and interests and obligations and how things would work together. So that's one opportunity at the very least for promoting that on a broader base.

The final comment just in relation to the policies, Policy 8, which Ngāti Tuwharetoa finds to be somewhat unusual, which is the one about

authorities making publically available, including electronically, a record of the process used to identify the tangata whenua values and interests. And there's just an issue of making publically available an update register of registry and non-regulatory methods to give this policy statement full effect. It's the first limit that rather than the latter one, it's the tangata whenua one the concern is about, with respect Ngāti Tuwharetoa can't see the value of that and isn't aware of the rationale behind that policy and it may be a more subtle less generic policy might be a bit more appropriate in that regard. It does seem unusual to have that degree of specificity in relation to a process for identifying the values and interests. Recording that the values and interests have been identified and the engagement has occurred is probably sufficient in Ngāti Tuwharetoa's view without specifying the precise process used because in many cases, this process may well be one that occurs in the forum of a marae or with certain other tikanga associated with it, and while the values that may be in tikanga that may be passed over by the iwi are in a form that can be made publically available, it seems somewhat inappropriate to me to have a process, a precise process in which that engagement occurred also made public because that may itself be subject to a number of issues in terms of protocol and confidentiality and things of that nature. And it really should be for the iwi themselves, if its their information that's being provided, to also be able to indicate what can and can't be made publically available in that regard and that should not only go to the values and interests, but also the process in which those values and interests were conveyed to the council. In many cases that might be fine, but I simply (inaudible) but it does seem to be a little unusual and a little bit - the parameters are a bit unclear as to quite what's required in that regard and why it's required.

The final point, just noting in relation to the section 32 report, Ngāti Tuwharetoa acknowledges that report and the assessment of options

contained in it. Ngāti Tuwharetoa does not wish to comment in any detail on any one of those options proposed, however notes that some of these, including the institution of national grants, standards in reform of the RMA are measures that Ngāti Tuwharetoa want to discuss with the Crown at a later date, in fact that date is probably now upon us. And certainly Ngāti Tuwharetoa encourages the Board of Inquiry to examine these options critically, certainly at least as far as context and where appropriate as far as what the Board can comment on as being possible complementary measures to the institution of a National Policy Statement on freshwater resources. I then come back to the point, this is only one limb of a multifaceted set of arrangements that really need to work in a cohesive and integrated fashion. And in that regard I personally have sympathy for the Board with a whole range of other policy initiatives that are forming (inaudible) National Government being pushed out in front to some extent, trying to grapple with this National Policy Statement without really I suppose having a great clarity about where everything else is heading, (inaudible) and therefore I suppose to one extent or not, it's almost inevitable that whatever this Board comes up with in terms of this National Policy Statement, like many of these other current mechanisms, may be need to be the subject of review once the broader set of regulatory and legislative reform has gone through. Particularly the RMA and a broader range of initiatives and other legislation.

In terms of - happy to answer any questions in relation to the submission, if there are any broader matters of interest in relation to the Trust Board's role or its interaction with its (inaudible) and other responsibilities, then the members of the Board are here to offer assistance as required.

CHAIR: Thank you Mr Fergusson. We may wish to ask some questions, and we have some times benefited from an exchange of that kind, so if you're willing, we'll proceed to that. Mr Prime?

[11.53 am]

MR PRIME: Thank you for your submission. I have some issues around paragraph 16 of your submission, so we might as well start with that, you're suggesting a more subtle less generic policy. I'm just a bit mystified, have you got a suggested wording for something like this?

MR FERGUSSON: No, no I haven't, I have to admit Mr Prime. I suppose, it was very difficult in the absence of understanding the policy rationale for the - you know, what was the driver for that policy being proposed. And I suppose from a personal perspective, whether it really, you know, and I'm purely speculating here, whether it was intended to avoid criticism of councils because they had recorded those interests of some groups and not others, whether that was the purpose. So whether - I suppose the question is, whether the level of detail required for Policy 8 perhaps is ambiguous, because one way you could look at it is saying it's the process specifically for each of the groups that you - that council captured tangata whenua values and interest, and if it's that, it's too detailed in my view. If it's simply we went through a process as a council to seek the views of tangata whenua and you know, we advertised or we got the names off somewhere, that might be less subtle, but if it's the actual - what the actual nature of the engagement directly between the iwi and the council, and the iwi, hapu and council, in my view that's going too far, that that should be publically available. It's simply because as we do have - often various groups when they're new or are having different agendas or different interests from other groups within a particular area and they feel they should be getting a high level of recognition and this is a way to safeguard councils, but I'm not sure if this is the motivation or not but I would have thought that that needs to be at that higher level just a general process that the council followed rather than specific engagement with -

MR PRIME: You're certainly not suggesting deleting it completely?

MR FERGUSSON: Well, I still wonder whether you know, if that's - seems a bit unusual that a National Policy Statement would contain a policy that's really designed for a technical kind of procedural issue of council, rather than something directed to the focus of the National Policy Statement, which is about freshwater and high-level policies driving down into obviously into regional policy statements, regional plans etc. And quite the relevance of that to that goal in the purpose of a National Policy Statement is beyond me. If one wants to have that type of requirement on a council, there are probably other mechanisms through the RMA or city councils practices that in the (inaudible) are much more appropriate for that. It seems to be an usual thing to try and put in through a National Policy Statement, I suppose would be my view. Whether it's a good thing or not is another matter, the vehicle is strange.

MR PRIME: The other question I wanted to ask was the use of the words tangata whenua, iwi and hapu. I just want your version of, distinction between the terminology.

MR FERGUSSON: Well I'm happy.. I can give you my personal view, it might be more appropriate if Te Kanawa or somebody else wished to explain the subtle differences between tangata whenua and iwi and hapu in our submissions.

MR PRIME: I can't see any difference between, you talk about subtle difference between iwi, hapu and tangata whenua – the terms being used in relation to the submission?

MR PITIROI: There would be very few differences, if any.

MR FERGUSSON: My response, and having regard to the submission and what we were talking about here is. I think Te Kanawa is quite right that from an iwi perspective, the terms tangata whenua are seen as iwi and hapu. They are the people of the particular rohe, and those people aren't Māori generically, when we're talking about tangata whenua in that regard we're talking about those that have the mana whenua connections within that rohe, and are bound by those genealogical whakapapa links, they're kin groups. And therefore, they're seen from an iwi perspective as interchangeable. The difficulty when they're enshrined in, I suppose, statutory documents such as the NPS, is they're then viewed through a different lens often, and then the more common lens is to view tangata whenua in a - the tendency can be to view tangata whenua in that context as a more generic concept of Māori generally within Aotearoa. Rather than viewing it as the essential kin group based collectives of hapu or an iwi. And water is managed in this country to date on a regional basis in terms of the councils, and while we are grappling here with a National Policy Statement, the purpose of that is to drive down into regional planning and regional policy making. And there (inaudible) iwi and hapu, now at that level they are the tangata whenua for that purpose, but the danger with just – with leaving the words in general statements as that they are capable of being used for I suppose bringing a range of other interests to the table, and then are very generic. And it's certainly in the view of Ngāti Tuwharetoa as I understand it, and I can stand to be corrected by anybody here, that the relationship with water and with waterways is seen in treaty terms for the areas as an article to right, an interests that derives through the status of those water and waterways as taonga. (inaudible) generic homogenous individually the right that flows through from say Article III, having all the rights and interests British subjects for example, so it's very much that relationship and the kaitiaki relationship, and a reciprocal responsibility between the water and

waterways, and iwi and hapu where it's not one of ownership , but one of almost the water owning – it's very much of that collective responsibility; it's not an individualised right in interest and sometimes the tangata whenua can be interpreted in that broader individualised sense of the generic term, that's the clarification I can give.

MR PRIME: Thank you, I've questions (inaudible) vested in your interpretations so, it's meant a lot.

MR LOUGHLIN: Just if you'd like me to add to that, part of the discussion we had outside of the RMA framework with our neighbours in Tainui is that as previously discussed, Waikato River does go from (inaudible) to right down to Waikato. And Tainui regards themselves as having a relationship with the river for that whole length of that area. When you get into the sort of legal side of things, our relationship is quite set certainly to Huka Falls, but from that point on there are a number of interests in the river, a number of hapu, a number or iwi. They have their own different relationships in terms of the protection of the river, we're working together, those sorts of relationships may not fit tightly into tangata whenua, iwi and hapu, in terms of who has a say in the specific areas. So, I'm giving an answer, but those are the sorts of dynamics that we deal with on a daily basis and they're dealt with through those relationships rather than us drawing boundaries and saying this is where we start and end. When it comes to these issues we've been just focusing on working together and improving the environmental outcomes, if you want to use those terms. So who is tangata whenua when you have a relationship with the whole of the - it's an interesting one.

MR PRIME: Thank you very much.

CHAIR: Mrs Vernon?

[12.03 pm]

MRS VERNON: Thank you. Just a couple of questions, first of all you indicated that you had quite and you have had quite a lot of input into the earlier draft of the NPS, and you are making sure that some of those changes are maintained in the final National Policy Statement. But I just wonder if you've got any comment about the fact that two groups have actually written alternative NPSs, and whether you've seen those and if you had if you've got a comment. Local Government New Zealand gave us an alternate, and so did Environmental Defence Society and Ecologics and theirs are more or less the same. And I just wondered whether Tuwharetoa had any comment about one or both of those?

MR FERGUSSON: Probably the easiest answer is to say no.

MRS VERNON: Right.

MR FERGUSSON: It's not to say Ngāti Tuwharetoa wouldn't have comment on it, but no they haven't had the opportunity to review those alternative ones at this point in time. But certainly if it would be of assistance to the Board, Ngāti Tuwharetoa Māori Trust would take the time to look at those submissions, and if there were any particular matters having regard to - the submission obviously was filed earlier, any supplementary matters we'd be more than happy to put those in writing to the Board, if you thought it would be of value.

MRS VERNON: No, that's fine, I was just interested. I mean there's nothing in them really other than they are seeking, I guess, what most people are seeking and that is that the bar be raised. And that everybody has concerns about New Zealand's Freshwater Management.

Going back to your original submission, in Objective 2, they talk about integrated management and a lot of your presentation this morning is really that we're really talking about integrated catchment management

aren't we, rather than integrated management? And that Tuwharetoa would have no objections, because Objective 2 at the moment just talks about integrated management. And it seems, and other submitters have actually suggested, it be "catchment management", but it just seems more logical, and going from your presentation this morning I would say that that's -

MR FERGUSSON: Very much so. I think one of the difficulties, certainly was the experience in (inaudible) to the Waikato River engagement which Ngāti Tuwharetoa was involved in as well, was the difficulty with trying to manage with either less than a catchment scale or on more than one catchment scale because you have such an overriding range of interests. And therefore, I think the catchment based model is the appropriate scale in which to do that and therefore, need to reflect the very important differences that can occur within catchments. I suppose one of the interesting things from a Ngāti Tuwharetoa's perspective in relation to that is there are some subtleties that sometimes escape the catchment run. And one example is in relation to the initiative – the fund that exists to retire, de-intensify the riparian farm and dairying around Lake Taupo, and the fund was set up for that and various changes were made by Taupo District Council, as I understand it, in relation to the land use requirements, to assist that process. Of course, what we have, we have a slight man made intervention into the natural catchments of the Waikato River, which is the diversion of waters from the head waters of the Wanganui River, through the Tongariro power scheme, into Lake Taupo. Now, those waters fall within the catchment of a different catchment, and a different council, namely Horizons, and as I understand it, someone correct me if I'm wrong, a request was made to Horizons to consider implementing the same standards to assure that the water coming through there wasn't going to be - was ultimately going to be of a consistent quality in the longer term anyway, and that proposition was rejected by that regional council.

So there are a few subtle connections between catchments that one needs to be a little bit wary of in that regards, and that's one example that Ngāti Tuwharetoa's aware of, but by and large I think the catchment approach is the right one, with a few exceptions that probably just need to be a little bit tailored in there when there are unnatural connections between the (inaudible) at the present time

MRS VERNON: Thank you. In Objective 8, there's two new terms that have been introduced and we've had several submitters from tangata whenua and iwi groups saying that they would rather have "recognised and provided for" rather than "identified and reflected". And I just wondered what Tuwharetoa's opinion was on that? It's on your paragraph 11(d), just over the page.

MR FERGUSSON: Yes, I think in terms of – yeah, the words "identified" and - I answer in two bits I suppose. In terms of the approach taken to the original draft National Policy Statement where comments were made, the position of Ngāti Tuwharetoa and the other iwi involved at that stage was that the National Policy Statement (inaudible) pointing in the right direction. And we had a limited opportunity to make some submissions, and engage on some of the wording. So, the key issues that were addressed were obvious the addition of the including the matters specified in Objectives 1 to 7. In terms of "identifying and reflecting" rather than "recognised and provided for" I think was the phrase, I would, certainly I think in terms of common usage I would envisage that they're probably to similar effect. Legally, probably "recognised and provided for" would be a more advantageous term to include, because it think it has some currency in the relative legislative frameworks, and therefore (inaudible) grappled with. In my view, it would be (inaudible), I think it's not inconsistent with "identified and reflected", and therefore certainly I think from Ngāti Tuwharetoa's perspective there would be difficulty with that proposition.

MRS VERNON: Okay, thank you, just on your next one, E, you've had electricity generation excluded. But we have had a number of submissions that have suggested that it's really important that domestic and municipal supply are recognised in the NPS as really being one of the priorities for everyone, social, economic, cultural and environmental wellbeing. And I just wondered what Tuwharetoa would feel about that?

MR FERGUSSON: Probably as an additional matter within policy -

MRS VERNON: Well, where it sits or whatever, but being recognised, I mean, where it sits it's probably not so much the issue, the question I'm asking at the moment is that we have had a lot of concern expressed that in fact domestic and municipal supply really does need to be put somewhere up front.

MR FERGUSSON: I think that's certainly one of the - in terms of the broader engagement Ngāti Tuwharetoa's been a part of, and particularly trying to grapple with some of these market concepts, certain sectors of society and certain agencies within the Crown might be a fan of, because really that challenge is that the market instruments, if they are brought in in a pure sense, don't have of their own nature a bottom line protection for I suppose water as a basic human right. And that's use of water, sustainability of communities in a domestic sense, and the discussions that I've been privy to which involved Ngāti Tuwharetoa, in which it's been articulated, is while it's often not said it's almost a given that's that a fundamental starting point and there's certainly, with that basic ethos and obviously - that water for people first for sustainability as a significant priority, and should be I think consistent within my view, and understanding of (inaudible) support of that, that should be an appropriate method to be recorded. Because the experience in several overseas jurisdictions, particularly in parts of South East Asia and the subcontinent where you've got market forces, there are many communities that are

now, do not have access to freshwater for drinking, or other domestic uses because simply - not simply, because the water isn't available but rather because the market may have priced them out of it, they cannot afford it.

[12.13 pm]

So that basic baseline should be recorded somewhere in this, at an appropriate place, I'm not sure whether that's the place for it, but probably with one of the Objectives I imagine rather than the pure policy matters, as a fundamental national statement. One would hope that somewhere along the line it would be more broadly contained within a legislative framework somewhere else, it wouldn't need to simply be in a Policy Statement, it should be a matter of fundamental human rights. That kind of Bill of Rights type nature, I think Ngāti Tuwharetoa would accept that as a fundamental principle. And as much as one might argue about the rights and interests of iwi, that fundamental right to water is one that is certainly at the forefront of that.

MRS VERNON: Thank you. Thank you sir.

CHAIR: Dr Harding?

DR HARDING: In your submission in paragraph 13, you refer to Objective 3 and you've suggested that you'd like to see the standard changed to drinkable, which a number of submitters have suggested that some higher standard is preferable. But I also note in there that you add the word all "significant" freshwater resources, some submitters have suggested that the way the objective is written at the present moment could be interpreted to be referring to all freshwater resources. I'm just wondering whether there's any particular reason why you've used the word "significant" there. What's your view on how widely this might be applied?

MR FERGUSSON: I'm not sure there is a - best not to be the author of the paragraph – but I'm here taking ownership of it now. So, I'm not sure if there was particular importance, other than to say I suppose that if it's all freshwater resources then, you know, that arguably includes a range of water bodies that might include marshlands, and other bits and pieces where I'd suggest that drinkability in relation to some, and brackish waters and things of that nature, that might have other natural, I suppose natural phenomena that can't be controlled in that way. So significant freshwater resources, I think it was intended to mean - to be directed towards that, rather than to suggest that you know you pick certain key waterways in New Zealand that have more significance than others. So I think that was the intention of it as far as I can hazard a guess in terms of that. I suppose that those that say "all freshwater resources" what's meant by "all freshwater resources", begs that - you know that question then arises because of that - in terms of you know, the purpose for the drinkability standard in that regard when you get into every unit and or highway, or byway, it may be a difficult challenge in that regard and whether that's the best way to approach it, or whether one starts with the main stems and works one's way back, I'm not sure. A lot of it would be land use controlled in any event and I suppose it's a, yeah – I'm not sure if I can take the matter much further than that in terms of the word "significant" that's used there.

DR HARDING: I guess you'll realise from our point of view, the actual wording becomes quite important, the intent is to improve the statement, that's fine, the question is how far does one go?

MR FERGUSSON: And over what timeframe as well, necessarily.

DR HARDING: I guess my next question is, sort of follows on from this in that, one might also think about the scope of freshwater resources. Currently in the draft statement, ephemeral and temporary streams are excluded, as are artificial waterways, so do you have a view on whether those sort of systems should be included in this NPS, or whether you're happy that they are excluded?

MR FERGUSSON: Yes I think it depends on – I think with some of those minor, or perceived to be minor, may well have – I don't have any particular in mind, may well have significant cultural value, spiritual value for various iwi, or hapu, and therefore necessarily excluding them by their nature when the quality – or the health and well being of those waterways may also be a matter of some significance. I suppose the question therefore it becomes a practical one, as to whether these mechanisms can tread light on those that are ephemeral or have other kinds of impacts. So I think excluding them as a class, potentially runs some problems. Quite how one could manage that, I suppose one's trying to avoid unnecessary regulation of waterways that are seen to have great impact. But in terms of artificial waterways, if they're joining into catchments, even if they're artificial there's a - as one would have seen from Te Kanawa's presentation, we're talking about a holistic ecosystem that sees all of these things connected and whether they're connected physically on top of the ground, or right through ground water connections or otherwise, there is a - certainly a cultural and spiritual interconnection of all (inaudible) in a genealogical sense, and often in a physical sense although it's not necessarily apparent, and so anything that has the potential to interconnect in with the water ecosystem approach, I suppose we would err on the conservative side and say that it should be subject to the same broad range of mechanism, certainly at a higher National Policy Statement, where, how they translate through on the ground, there may

be some discretion, but I think as a matter of principle they shouldn't be excluded generically at the start. I hope that's of assistance.

DR HARDING: Yes thank you very much. That's all my questions.

CHAIR: In your paragraph 11. In the section dealing with paragraph 5 or the fifth paragraph, I suppose, of the preamble of the proposed NPS, you're referring to the way in which the Policy Statement talks about the involvement of iwi and hapu in the management of freshwater. Is there a High Court judgment, which this Board should respect and apply that says that the extent to which under the RMA regional and district councils transfer management functions to iwi is a matter for each of them individually to exercise a discretionary judgment, and not a matter that should be imposed upon them?

[12.23 pm]

MR FERGUSSON: In terms of the discretion that exists, for under the RMA in relation to the district and regional councils, the discretion as I understand it, and correct me if I'm misunderstanding your question, relates to the legislative tools under the Resource Management Act by which the council can integrate or incorporate with iwi, more actively in their decision making processes in a suite of, I presume Your Honour is talking about delegation transfers, joint management agreements of that nature, and therefore there is a discretion in that regard. I think what we're looking at here, and particularly this statement, is looking at the management of freshwater generically through the Resource Management Act obviously is the primary method of that, but trying to ensure that the regime that occurs addresses their values and interests, including the involvement of iwi, and hapu in the management. So we're talking about the proposed National Policy Statement is one step in the process of addressing tangata whenua

value and interests, including the involvement of iwi and hapu in the management of freshwater. The “including the involvement of iwi and hapu” in that regard, was in my understanding directed to the tangata whenua values and interests, including the involvement of iwi and hapu, rather than addressing “Tangata Whenua interests (comma) including the involvement of iwi and hapu in the management of freshwater.” So I don’t think in that regard one was, as I remember the statement or the purpose of the statement, was that it was trying to qualify the tangata whenua - addressing tangata whenua values and interests by saying that includes involving iwi and hapu, rather than trying to dictate to Regional Councils that they must through this National Policy Statement involve iwi and hapu in their management decision-making.

CHAIR: So do you agree with me, that a National Policy Statement cannot do that.

MR FERGUSSON: No I – well, first I am addressing what I think this was saying and is doing. The other point of that is that I think in this context we’re saying the National Policy Statement is one step in terms of that process. So even if the process was saying we want to involve and this is a Crown National Policy Statement, this is one part of trying to involve iwi and hapu in the management of freshwater, I don’t think this National Policy Statement as it stands requires councils to –

CHAIR: I’m not asking that, I’m asking whether you agree that as a matter of law it cannot?

MR FERGUSSON: The National Policy Statement only has a legal effect in terms of the mechanism set up under the RMA, therefore its legal effect, as far as I see, translates through into Regional Policy Statements, down into regional and district plans.

CHAIR: So is the answer yes?

MR FERGUSSON: So the answer in that regard is that the National Policy Statement legally as the RMA currently exists, doesn't impact upon the discretion the councils have as whether to exercise their powers under section 32, or whatever it is, in terms of joint management agreements, transfers, or delegations, that that's the decision, the discretionary decisions that they can have to involve formally iwi and hapu. Now whether as a matter of good practise they should do so having regard to what an NPS says and is trying to aspire to, is another matter. I'd be interested to see the argument if somebody was suggesting that the NPS could have that effect. I'm not sure if that is the vehicle for that. But it can certainly, and I think does in this regard, raise a number of very important Policy Objectives, which as I've said earlier when translated through really open it up for one if really wants to efficiently and effectively deliver on these, and involve iwi and hapu in order to ensure that these outcomes are achievable, then there are mechanisms that, in my view, regional councils should prudently exercise their discretion in favour of incorporation the iwi and hapu more actively. But I think you're right in terms of the proposition as you have stated it. That's without having the judgment in front of me, or reflecting on it more than instantly to Your Honour's question. It requires a broader level of legislative reform.

CHAIR: Well that's outside the scope of an ad-hoc Board of Inquiry isn't it?

MR FERGUSSON: Correct. Yes.

CHAIR: Thank you. Now paragraph 17, you refer to a section 32 report and you speak of some options contained within section 3 of the section 32 report. And you encourage the Board of Inquiry to exam these options critically.

And my question is, why should the Board do that? The Minister has chosen amongst the options. The Board must respond to submissions.

MR FERGUSSON: In terms of that, and I can only qualify with my interpretation of the statement here, I think the intention was that this was, I suppose, the way it's phrased, "to exam the options critically" is more going direct - this is my interpretation anyway, is that it was more directed to ensuring that the Board is cognisant of the broader context. Because you are correct in saying the Board has a particular Terms of Reference, and things that it is directed to but it's, I suppose it's the broader suite of the context within which the National Policy Statement operates in some of the other relevant parallel initiatives that could be made. No doubt you are receiving a number of submission that suggest going down very different routes, and there's only an extent to which one can do that in a contextual way, rather than in a practical outcome or alter the vehicle in which you are grappling with, as you say, as an ad-hoc Board of Inquiry.

CHAIR: Well on the contextual point, we've had the good fortune to hear Te Kanawa's presentation at the start of this hearing and of course we're grateful for that. We've also had the good fortune to listen to the submissions, and to have an exchange of questions and answers. We're grateful for that as well.

So that completes the presentation this morning and completes our sitting at Taupo, and tomorrow we'll be sitting at Whakatane.

ADJOURNED **[12.31 pm]**