



# *Hastings District Council*

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## OPEN A G E N D A

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### HDC - MĀORI JOINT COMMITTEE MEETING

Meeting Date: **Wednesday, 28 February 2018**

Time: **1.00pm**

Venue: **Council Chamber  
Ground Floor  
Civic Administration Building  
Lyndon Road East  
Hastings**

<b>Committee Members</b>	<b>Chair:</b> Mr Robin Hape Mayor Hazlehurst Councillors Barber, Lyons, O'Keefe, Poulain and Travers Mr Te Rangihau Gilbert, Ms Tracee Te Huia, Mrs Evelyn Ratima, Mr N Tiuka and Mr S Walker <b>Kaumatua:</b> Jerry Hapuku
<b>Officer Responsible</b>	Principal Advisor: Relationships, Responsiveness and Heritage - James Graham
<b>Committee Secretary</b>	Carolyn Hunt (Extn 5634)

## **Hastings District Council: Māori Joint Committee – Terms of Reference**

This Committee is established between the Hastings District Council and Māori within Hastings District, and shall have the status of a standing committee of the Hastings District Council.

### **Context and values**

The Council views its fundamental role as being to help its communities to overcome the challenges they face and capitalise on the opportunities they have. The Council views Māori within Hastings District as an important part of its constituency, with their own customs, aspirations and, in some areas of Council activity, service delivery preferences. Council relates to Māori both as mana whenua holding customary authority in the District, and as citizens and service users in relation to the Council's democratic, stewardship and service delivery functions. In order to be responsive to Māori in an effective manner, the Council puts in place a range of engagement and decision making mechanisms. This committee is one such mechanism.

- The Joint Committee has been established by the Council to provide a Māori perspective into the governance process of the Council. Further it is intended to assist the Council to meet the intent and spirit of the Council's obligations set out in the legislation, including the obligations specified in the Local Government Act 2002 to take action:
  - towards establishing and maintaining processes that provide opportunities for Māori to contribute to the decision processes of the Council and
  - fostering the development of Māori capacity to contribute to those processes and
  - providing information to assist Māori contribution to Council's activities.
- The Council wishes the Joint Committee to assist it with the development of an integrated policy framework (based on Treaty of Waitangi Principles) for the Council aimed at delivering effective governance, engagement and service delivery for Māori within the District.
- For the avoidance of doubt, the existence of this committee does not in any way limit or remove the Council's obligations under law to work with or consult with parties holding or exercising traditional authority recognised in statute or common law.

### **Fields of Activity**

#### **A. Strategy and Governance**

- To provide governance level advice to the Council, from a Māori perspective, on matters of strategy and policy development across the scope of Council's activities where those activities are of interest to the Committee.
- To develop, update and recommend to Council a policy framework and work programme, known as the Māori Responsiveness Framework.
- To provide input and advice into the Long Term Plan and the Annual Plan in order to assist the Council to effectively consider Māori perspectives and address issues of importance to Māori within the District.
- To undertake, and provide advice to Council on, monitoring of Council performance against goals and objectives contained in the LTP and the Māori Responsiveness Framework.
- To assist the Council as appropriate in conducting and maintaining effective, good faith working relationships with Māori within the District, including advice on governance arrangements.

#### **B. Operational Matters**

- To provide policy advice, with respect to the District Plan, regarding provisions for Wāhi Taonga and Wāhi Tapu, Papakainga, and where relevant to tangata whenua, any other proposals for amendments to the Plan.
- To consider and recommend Māori capacity building initiatives within budget and resource constraints of the Council.

- To make decisions as to the allocation of Marae Whakaute Marae Development Fund grants within the allocated budget.
- To consider and make recommendations to Council on such other matters placed before it by Council from time to time.

### **Membership**

The Mayor.

5 Councillors appointed by the Council.

6 members from within the Māori Community to be appointed by the Council and Kaumatua, taking into account the “post settlement environment” and Matāwaka.

Election of Chairman and Deputy Chairman:

Chairman – to be elected at the first meeting of the Committee at the beginning of each triennium; and from among the appointed community members of the committee.

Deputy Chair – to be elected at the first meeting of the Committee at the beginning of each triennium from among the elected members of the committee.

**Quorum** – at least three Councillor Members and three Appointed Members

### **Delegated Powers**

Authority to exercise all Council powers, functions and authorities in relation to the matters detailed in the Fields of Activity such as to enable recommendations to the Council on those matters.

Authority to make decisions on the allocation of Marae Development Fund grants within the allocated budget.

Authority to develop procedures and protocols that assist the Committee in its operation, provided that such procedures and protocols meet the statutory requirements of the Local Government Act 2002, the Local Government Official Information and Meetings Act 1987 and Council’s Standing Orders.

The Chairman shall not have a casting vote.

Note: The Terms of reference for the Hasting District Council: Māori Joint Committee shall be subject to review by the Joint Committee at its first meeting following each local government triennial election.



**HASTINGS DISTRICT COUNCIL**  
**HDC - MĀORI JOINT COMMITTEE MEETING**

**WEDNESDAY, 28 FEBRUARY 2018**

**VENUE:** Council Chamber  
Ground Floor  
Civic Administration Building  
Lyndon Road East  
Hastings

**TIME:** 1.00pm

**A G E N D A**

**1. Apologies**

At the close of the agenda no apologies had been received.

At the close of the agenda no requests for leave of absence had been received.

**2. Conflict of Interest**

Members need to be vigilant to stand aside from decision-making when a conflict arises between their role as a Member of the Council and any private or other external interest they might have. This note is provided as a reminder to Members to scan the agenda and assess their own private interests and identify where they may have a pecuniary or other conflict of interest, or where there may be perceptions of conflict of interest.

If a Member feels they do have a conflict of interest, they should publicly declare that at the start of the relevant item of business and withdraw from participating in the meeting. If a Member thinks they may have a conflict of interest, they can seek advice from the Chief Executive or Executive Advisor/Manager: Office of the Chief Executive (preferably before the meeting).

It is noted that while Members can seek advice and discuss these matters, the final decision as to whether a conflict exists rests with the member.

**3. Confirmation of Minutes**

Minutes of the HDC - Maori Joint Committee Meeting held Wednesday 6 December 2017.

<b>4.</b>	<b>Wāhi Tapu/Wāhi Taonga Project Update</b>	<b>9</b>
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<b>7.</b>	<b>Proposed Workshop</b>	<b>33</b>
<b>8.</b>	<b>Additional Business Items</b>	
<b>9.</b>	<b>Extraordinary Business Items</b>	



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## **OPEN MINUTES**

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### **HDC - MĀORI JOINT COMMITTEE**

Meeting Date: **Wednesday, 6 December 2017**

**Minutes of a Meeting of the HDC - Māori Joint Committee held on  
6 December 2017 at 9.00am**

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## HASTINGS DISTRICT COUNCIL

### MINUTES OF A MEETING OF THE HDC - MĀORI JOINT COMMITTEE HELD IN THE COUNCIL CHAMBER, GROUND FLOOR, CIVIC ADMINISTRATION BUILDING, LYNDON ROAD EAST, HASTINGS ON WEDNESDAY, 6 DECEMBER 2017 AT 9.30AM

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**PRESENT:** Chair: Mr Robin Hape  
Councillors Travers, Lyons and Poulain  
Ms Tracee Te Huia, Mr Ngaio Tiuka and Mr S Walker

Kaumatua: Jerry Hapuku

**ALSO PRESENT:** Chief Executive (Mr Ross McLeod)  
Group Manager: Community Facilities & Programmes  
(Mrs A Banks)  
Strategy Manager (Mr L Verhoeven)  
Hastings City Art Gallery Director (Ms T MacKinnon)  
Acting Libraries Manager (Ms K Peterson)  
Environmental Planner (Policy) (Mr C Scott)  
Māori Services Librarian Kaitiaki Pukapuka (Ms M Munro)  
Project Manager (Mrs P Murdoch)  
Secretary (Mrs C Hunt)

**AS REQUIRED:** Mr Piripi Smith, Ātea-a-Rangi Educational Trust

*Kaumatua Hapuku gave the opening Karakia.*

*Due to a lack of quorum, the start of the meeting was delayed 30 minutes until a quorum was present - ie 3 Councillors and 3 Appointed Māori Representatives.*

#### 1. APOLOGIES

Councillor Travers/Mr Walker

**That apologies for absence from Evelyn Ratima, Councillor O'Keefe and Mayor Hazlehurst be accepted.**

**CARRIED**

Leave of Absence had previously been granted to Councillor Barber.

#### 2. CONFLICTS OF INTEREST

There were no declarations of conflicts of interest.

#### 3. CONFIRMATION OF MINUTES

Mr Hape/Councillor Travers

**That the minutes of the HDC - Māori Joint Committee Meeting held Wednesday 16 August 2017 be confirmed as a true and correct record and**

be adopted.

**CARRIED**

**4. FORUM ITEM: WINTER SOLSTICE AND MATARIKI JUNE 18-22 2018**

(Document 17/1053)

Mr Smith from the Ātea-a-Rangi Educational Trust displayed a powerpoint presentation (CG-14-14-00033) on a proposal to deliver a unique Matariki/Winter Solstice Event focused on people learning from 18-22 June 2018.

Mr Smith also advised that the Ātea-a-Rangi Educational Trust was seeking funding of \$10,000 to support the event in 18-22 June 2018 at the Atea a Rangi Star Compass at Waitangi Regional Park.

Mr Walker/Mr Tiuka

- A) That the report of the Chief Executive titled “Forum Item: Winter Solstice and Matariki June 18-22 2018” dated 6/12/2017 be received.**
- B) That the HDC : Māori Joint Committee recommends to Council that funding of \$10,000 for the Winter Solstice and Matariki Event 18-22 June 2018 be considered as part of the Long Term Plan.**

**CARRIED**

**5. 2018 LONG TERM PLAN – UPDATE**

(Document 17/1271)

The Strategy Manager, Mr Verhoeven displayed a powerpoint presentation (CP-10-1-17-30) providing an overview of the 2018 Long Term Plan activity.

Feedback from the Maori Joint Committee in response to the development of the 2018 Long Term Plan included the following:

- The need for an updated assessment of Maori communities drinking water requirements;
- That continual upgrade and advancement of wastewater treatment and disposal, needs to be the longer term aspiration, when considering future wastewater options;
- That the Council's Solid Waste team link with the work of Para Kore to reduce waste and that an update on this be reported back;
- Reference of Council's involvement with the Social Inclusion Strategy be made;
- That attention be given to uplifting amenity in deprived areas of the district;
- That the Council investigate a Housing Certification (warrant of fitness scheme);
- That the request for funding support from the Atea-a Rangi Educational Trust be supported by Council.

A further point in regard to the tree species selection across the district was referred directly to the Parks and Property Manager, Colin Hosford.

*It was also noted that any further comment could be forwarded directly to the Strategy Manager, Lex Verhoeven.*

Mr Walker/Councillor Lyons

- A) That the report of the Strategy Manager titled “2018 Long Term Plan - Update” dated 6/12/2017 be received.**
- B) That Council officers incorporate any feedback and direction from the Committee into the completion of the 2018 Long Term Plan:**
- The need for an updated assessment of Maori communities drinking water requirements;
  - That continual upgrade and advancement of wastewater treatment and disposal, needs to be the longer term aspiration, when considering future wastewater options;
  - That the Council’s Solid Waste team link with the work of Para Kore to reduce waste and that an update on this be reported back;
  - Reference of Council’s involvement with the Social Inclusion Strategy be made;
  - That attention be given to uplifting amenity in deprived areas of the district;
  - That the Council investigate a Housing Certification (warrant of fitness scheme);
  - That the request for funding support from the Atea-a Rangi Educational Trust be supported by Council.

**CARRIED**

## **6. HASTINGS CITY ART GALLERY ACTIVITIES** (Document 17/1232)

The Hastings City Art Gallery Director, Ms Mackinnon updated the Committee on activities and programme delivery at the Art Gallery Māori that link primarily with the “Culture and Identity” aspects of the Maori Responsiveness Framework.

Ms Mackinnon also advised that it was planned to develop a Manawhenua reference group for the Hastings City Art Gallery before the end of 2018. Ms Mackinnon would seek guidance from the Committee on who would be the appropriate contacts for the reference group.

Councillor Lyons/Mr Tiuka

- A) That the report of the Hastings City Art Gallery Director titled “Hastings City Art Gallery Activities” dated 6/12/2017 be received.**

**CARRIED**

## **7. HASTINGS DISTRICT LIBRARIES UPDATE**

(Document 17/1237)

The Acting Libraries Manager, Ms Peterson displayed a powerpoint presentation, including a brief video clip (CFM-06-4-17-405) updating the Committee on current activities and progress made at Hastings District Libraries (HDL) towards the goals outlined in the *Libraries’ Strategic Plan, 2016-2020*.

Ms Peterson advised that the “Summer Sparks” programme had been developed for the summer which replaced the ECREAD’N programme. The Library were actively trying to incorporate more Māori into programmes and were also targeting schools that had higher Māori student roles.

Libraries were recognized as a community hub and with different demographics one of the challenges for Libraries that were traditionally quiet places and different users were now using the space as was much noisier. Although Libraries were changing to meet the needs of the community it brought with it other issues that needed to be addressed to keep staff safe.

With the refurbishment of the Havelock North Library the community were asked to submit name suggestions for meeting rooms. The following options had been put forward:

- Hinerakau and Rongokako
- Te Mata and Kahurānaki
- Tuki Tuki and Karamu
- Tuki Tuki and Ngaruroro

The Committee were supportive of the meeting rooms being titled in Māori, however advised that the story was also important not just the name. It was suggested that Kaumatua have input to ensure the correct legend was used. Having the legend/story as well as the name on the Meeting Room was suggested.

The Committee were keen on raising literacy levels and developing culture for Māori and requested the possibility of ethnicity data being collected for library users.

Councillor Travers/Ms Te Huia

- A) That the report of the Acting Libraries Manager titled “Hastings District libraries update” dated 6/12/2017 be received.**
- B) That the HDC : Māori Joint Committee recommend to Council that officers explore and establish mechanisms on demographic information, including ethnicity from library members.**

**With the reasons for this decision being that the objective of the decision will contribute to meeting the current and future needs of communities for**

good quality local public services in a way that is most cost-effective for households and businesses by:

- i) Providing community infrastructure for recreational, arts and cultural opportunity;
- ii) Providing services to meet recreational, arts and cultural needs;
- iii) Providing assistance for people in need;
- iv) Creating a strong district identity.

**CARRIED**

## **8. PAKAINGA HOUSING WITHIN HASTINGS DISTRICT**

(Document 17/1245)

The Senior Environmental Planner (Policy), Mr Scott, displayed a powerpoint presentation (ENV-9-11-7-17-13) updating the Committee on Papakainga Housing in the District. Current Papakainga development were:

- Waiohiki (3 separate)
- Clive/Kohupatiki (2 separate)
- Waipatu/Bennett Rd
- Waimarama
- Ocean Beach/Waipuka (Consent/Funding Granted)
- Bridge Pa (Funding Granted)

Many developments had occurred due to a project management resource allocation applied by Te Puni Kokiri, utilising Paul Sheeran as a project manager. To ensure the consent, land ownership, grants, kainga whenua loans and multiple other aspects it was essential to have a Project Manager to ensure timeframes were retained.

Mr Scott advised that the biggest hold up was funding and it was anticipated that the new Government would make an announcement around Waitangi Day 2018.

The Committee applauded the work undertaken by Council on the Papakainga Housing in the district and its success.

Mr Walker/Mr Tiuka

- A) That the report of the Senior Environmental Planner (Policy) titled “Papakainga Housing within Hastings District” dated 6/12/2017 be received.**

**CARRIED**

*Councillor Travers left the meeting at 11.50am.*

**9. ADDITIONAL BUSINESS ITEMS**

There were no additional business items.

**10. EXTRAORDINARY BUSINESS ITEMS**

There were no extraordinary business items.

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The meeting closed at 11.50am

Confirmed:

Chairman:

Date:

**REPORT TO:** HDC - MĀORI JOINT COMMITTEE

**MEETING DATE:** WEDNESDAY 28 FEBRUARY 2018

**FROM:** SENIOR ENVIRONMENTAL PLANNER POLICY (SPECIAL PROJECTS)  
ANNA SANDERS

**SUBJECT:** WĀHI TAPU/WĀHI TAONGA PROJECT UPDATE

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## **1.0 SUMMARY**

- 1.1 In April 2017, a report was brought to Council outlining the need to initiate a review as there was a need to better align the realities of customary practices and the expectations of mana whenua to exercise their customary rights with the operation of the District Plan. The purpose of this report is to update the Committee on the wahi taonga review project since the projects inception.
- 1.2 This issue arose during the submission process for the review of the District Plan. Council has the will and can enhance its capacity to take customary rights and practices into account where the rules in the District Plan are culturally appropriate with respect to wāhi tapu.
- 1.3 The Council is required to give effect to the purpose of local government as prescribed by Section 10 of the Local Government Act 2002. That purpose is to meet the current and future needs of communities for good quality local infrastructure, local public services, and performance of regulatory functions in a way that is most cost-effective for households and businesses. Good quality means infrastructure, services and performance that are efficient and effective and appropriate to present and anticipated future circumstances.
- 1.4 The objective of this decision relevant to the purpose of Local Government is acknowledge the obligation to include mana whenua in the policy development process and in the decision making of Council.
- 1.5 This report concludes by recommending that this report be received for information purposes.

## **2.0 BACKGROUND**

- 2.1 In 2006 Council commenced a project Wāhi Tapu Stage One. That was led by the Policy Planning Group, and it was a two year project. Its purpose was to affirm the sites already registered in a schedule for protection in the District Plan. This included meeting with the whānau and hāpu related to them, and completing the legal descriptions and GPS citations.
- 2.2 In 2009 Council commenced a further project Wāhi Tapu Stage Two. The objective of this was to develop a nomination process for further wāhi tapu sites to be registered with the District Plan for protection. The outcome was that only one or two sought to nominate sites; and the reliance was on Heritage NZ to provide research for provenance, and a slight disconnect with mātauranga hāpu that was also supplied by related whānau.

- 2.3 The reality of the comparison between Council's statutory practice and customary rights and practices became clear during the recent review process of the District Plan and submissions that were received as an outcome of that.
- 2.4 In particular, a prominent submitter, Maungaharuru Tangitu Iwi Incorporated, sought to nominate over 120 wāhi tapu sites through the submission process. The ideal policy and procedural context is not developed within Council sufficient to incorporate the expectations of a robust nomination process to include mātauranga and the rights of property owners in balance.
- 2.5 Concern has also been expressed about the balance between the rights of property owners where sites have been identified relative to customary rights and practices.
- 2.6 The Project Structure was previously adopted as:
- A working group comprising: Council officers, Te Puni Kokiri, Māori Land Court, Archaeologist, Heritage New Zealand, Napier City Council and MTG.
  - A reference group comprising: affected parties, local archaeologist, and any other entities who are responsible for the exercise of customary rights and practices with respect to wāhi tapu and wāhi taonga.
- 2.7 The outputs were identified as:
- 2.7.1 An amendment to the Wāhi Taonga Section of the District Plan
- 2.7.2 A wāhi tapu/wāhi taonga toolkit [list of sites, nomination and registration processes, for example]
- 2.7.3 Establish a mutually appropriate panel to review the nomination process.

### 3.0 CURRENT SITUATION

- 3.1 Post the establishment of the project structure, at the recommendation of Councils then Cultural Adviser, Karl Wixon was appointed as project facilitator, who has continued to work closely with the Environmental Policy team.
- 3.2 Three workshops have been held to date and facilitated by Karl Wixon; one with a Māori reference group made up of representatives of hapu and another two with stakeholders (including Heritage New Zealand, Te Puni Kokiri and the Maori Land Court).
- 3.3 From these workshops some outcomes emerged, including confirmation that there is a clear need for further Māori leadership and engagement in the early stages of the project to:
- EXPLORE: Reflect on outcomes to date and further explore the identified kaupapa at a more detailed / deeper level;
  - IDENTIFY: To be able to identify, collate and validate current knowledge on wāhi tapu / wāhi Māori; and
  - DEFINE: Clearly define the challenges / problems that need solving, so that a clear 'brief' can be provided to stakeholder agencies to respond to.



- 3.4 However it was identified before a project plan is developed any further that an additional workshop is needed to obtain the viewpoints of private property owners and developers. This is scheduled to occur in the next couple of months. Once this has occurred, it is intended to develop a project plan and bring a paper back to the Maori Joint Committee with further details.

#### **4.0 OPTIONS**

- 4.1 This report is for information purposes only.
- 4.2 The costs associated with this project are to be resourced through the District Plan budget. There is sufficient budget for the start-up costs associated with the project including the specific costs for the project team. The costs will be monitored to ascertain whether additional budget may be required for the costs associated with implementing the policy that will arise from the project.

#### **5.0 SIGNIFICANCE AND ENGAGEMENT**

- 5.1 This report does not trigger any threshold in the Policy on Significance and Engagement policy.
- 5.2 Informal consultation has occurred with affected parties who participated in the review of the District Plan. Further Māori stakeholders have been engaged in discussion and agree the need for the Project to be undertaken.

#### **6.0 RECOMMENDATIONS AND REASONS**

- A) That the report of the Senior Environmental Planner Policy (Special Projects) titled “Wāhi Tapu/Wāhi Taonga Project Update” dated 28/02/2018 be received for information purposes.**

##### **Attachments:**

There are no attachments for this report.



**REPORT TO:** HDC - MĀORI JOINT COMMITTEE

**MEETING DATE:** WEDNESDAY 28 FEBRUARY 2018

**FROM:** SENIOR ENVIRONMENTAL PLANNER POLICY (SPECIAL PROJECTS)  
ANNA SANDERS

**SUBJECT:** TE MANA WHAKAHONO O ROHE/IWI PARTICIPATION AGREEMENTS UPDATE

## 1.0 SUMMARY

- 1.1 The Resource Legislation Amendment Act enacted on 18 April 2017, includes new provisions around the way Māori are involved in the management of natural resources through iwi participation agreements known as Te Mana Whakahono a Rohe. Te *Mana Whakahono a Rohe* provide a mechanism for Councils to meet their existing obligations to consult with local iwi on resource management matters.
- 1.2 The purpose of Te Mana Whakahono a Rohe is to:
  - provide a mechanism for local authorities and iwi authorities to discuss, agree, and record ways in which tangata whenua may, through their iwi authorities, participate in resource management and decision-making processes under the RMA; and
  - assist councils to comply with their statutory responsibilities under the Resource Management Act 1991 (RMA).
- 1.3 A previous report to this Committee outlined the key provisions of Te *Mana Whakahono a Rohe* as introduced under the Resource Management Amendment Act 2017. However, as these changes are new and guidance documents not yet release by the Ministry for the Environment, their intended application is not clearly understood. Further work will be needed to understand the implications of the changes including resourcing.
- 1.4 It was suggested that Council wait until the work that the Ministry for the Environment is currently doing to provide assistance to iwi and Councils around the implementation of Te *Mana Whakahono a Rohe* before looking at holding a workshop. The workshop could address the challenges and complexities for iwi and Council around developing multiple agreements with iwi and other councils, acknowledging overlapping iwi interests, and the funding and staff resources required to undertake the work.
- 1.5 The purpose of this report is to update the Committee about the guidance work the Ministry for the Environment is currently doing to provide assistance to iwi and Councils around the implementation of Te *Mana Whakahono a Rohe*.
- 1.6 The Council is required to give effect to the purpose of local government as prescribed by Section 10 of the Local Government Act 2002. That purpose is to meet the current and future needs of communities for good quality local

infrastructure, local public services, and performance of regulatory functions in a way that is most cost-effective for households and businesses. Good quality means infrastructure, services and performance that are efficient and effective and appropriate to present and anticipated future circumstances.

- 1.7 This report concludes by recommending that the update be received for information purposes.

## 2.0 BACKGROUND

- 2.1 The Government early last year introduced a large number of changes to the Resource Management Act 1991 which included increasing mana whenua participation in resource management issues. One of the notable changes is improving opportunities for Maori to become involved in the management of natural resources through iwi participation agreements or Te Mana Whakahono a Rohe. It provides a “... *universal vehicle through which iwi and Councils can develop a deeper understanding and agree collaborative arrangements that protect our natural ecosystems and enable sustainable development consistent with our kaitiakitanga values*” (Sir Mark Soloman (Deputy Chair of the Freshwater Iwi Leaders Group)). Agreements will be similar to those reached in Treaty Settlements.
- 2.2 The purpose of Te Mana Whakahono a Rohe is to provide a mechanism for local authorities and iwi authorities to discuss, agree, and record ways in which tangata whenua may, through their iwi authorities, participate in resource management and decision-making processes under the RMA. An additional purpose is that MWR will assist councils to comply with their statutory responsibilities under the Resource Management Act 1991 (RMA), including the implementation of sections 6(e), 7(a) and 8. These sections require:

Section 6:

### **6 Matters of National Importance**

*In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall recognise and provide for the following matters of national importance:*

- (e) *The relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga.*

### **7 Other Matters**

*In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall have particular regard to—*

- (a) *Kaitiakitanga:*

### **8 Treaty of Waitangi**

*Section 8 requires that all persons exercising functions and powers under the Resource Management Act take into account the principles of the [Treaty of Waitangi](#).*

- 2.3 The overall objective of the changes are to ensure iwi are engaged early in resource management processes on issues that are important to them. As specified in the changes, agreements must include how iwi can participate in the preparation of a policy statement or plan processes, like is the case currently; agreeing on environmental monitoring and reporting; consultation processes; how the parties will give effect to relevant iwi participation legislation; a process for conflict of interest; and a process for dispute resolution.
- 2.4 Several guiding principles for those that wish to initiate a Te Mana Whakahono a Rohe are provided:
  - (a) to enhance the opportunities for collaboration amongst all participating authorities;
  - (b) to work together in good faith and in the spirit of co-operation;
  - (c) to communicate with each other in an open, transparent and honest manner;
  - (d) to commit to meeting statutory time frames and minimise delays and costs for the process; and
  - (e) to recognise that Te Mana Whakahono a Rohe do not limit iwi participation legislation.

### **3.0 CURRENT SITUATION**

- 3.1 The Amendment provisions provide a framework to enable iwi to further initiate processes with Councils to enter into agreements on how tangata whenua are to be involved in resource management processes. Parties involved in a Te Mana Whakahono a Rohe are not limited to one iwi authority and one Council.
- 3.2 It is envisaged that Te Mana Whakahono a Rohe can provide a tool to better understand iwi aspirations, consolidate iwi engagement across Council and build practical and sustainable relationships with iwi. Thereby creating certainty over areas of iwi interest, and that certainty will benefit councils, iwi authorities and applicants.
- 3.3 The Ministry for the Environment has been preparing and it is intended that they issue a guidance document in the first half of this year around the implementation of Te Mana Whakahono a Rohe. *The guidance document is being prepared following workshops with local authorities and iwi/hapū representatives in late 2017. It is the Ministry's intention that they then provide targeted support to iwi authorities, hapū and local authorities around the changes.*
- 3.4 *Council officers are keeping a watching brief on the release of the Ministry's guidance document. When this occurs consideration should be given to holding a workshop to address the challenges and complexities for iwi and Council around developing multiple agreements with iwi and other councils,*

acknowledging overlapping iwi interests, and the funding and staff resources required to undertake the work. It is envisaged that any future workshop is arranged by the Relationships, Responsiveness and Heritage Section of Council.

#### **4.0 OPTIONS**

- 4.1 This report is for information purposes only.

#### **5.0 SIGNIFICANCE AND ENGAGEMENT**

- 5.1 Nothing in this report triggers the threshold of the significance policy.
- 5.2 It might be useful to hold a workshop with iwi authorities to discuss and consider what opportunities there maybe to take up the mechanism of *Te Mana Whakahono a Rohe in a way that is mutually appropriate with respect to understanding, resources and timing in the future. This should occur once guidance is issued from the Ministry of the Environment on Te Mana Whakahono a Rohe.*
- 5.3 As mentioned above, there is likely to be resourcing issues associated with these changes and careful consideration will need to be given to these over time.

#### **6.0 RECOMMENDATIONS AND REASONS**

- A) That the report of the Senior Environmental Planner Policy (Special Projects) titled “Te Mana Whakahono o Rohe/Iwi Participation Agreements Update” dated 28/02/2018 be received for information purposes.**

#### **Attachments:**

There are no attachments for this report.

**REPORT TO:** HDC - MĀORI JOINT COMMITTEE

**MEETING DATE:** WEDNESDAY 28 FEBRUARY 2018

**FROM:** ENVIRONMENTAL POLICY MANAGER  
ROWAN WALLIS

**SUBJECT:** TE MATA TRACK

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## **1.0 SUMMARY**

- 1.1 The purpose of this report is;
- a) to inform the Committee about the adequacy of the Proposed District Plan provisions as they apply to the Outstanding Natural Features and Landscapes identified within the Hastings District, particularly in respect of ONFL1 – Te Mata Peak,
  - b) to inform the Committee of the resolutions passed by the Planning and Regulatory Committee which was for the Māori Joint Committee and the Council to attend a joint workshop to consider the options for changes to the proposed District Plan to better safeguard the cultural and visual values of Te Mata Peak.
  - c) To discuss the issues ahead of the joint workshop to ensure that officers are appropriately prepared for the workshop.
- 1.2 This issue arises from the effects of the construction of a new walkway by the Craggy Range Winery on the eastern side of Te Mata Peak (ONFL1).
- 1.3 The Council is required to give effect to the purpose of local government as prescribed by Section 10 of the Local Government Act 2002. That purpose is to meet the current and future needs of communities for good quality local infrastructure, local public services, and performance of regulatory functions in a way that is most cost-effective for households and businesses. Good quality means infrastructure, services and performance that are efficient and effective and appropriate to present and anticipated future circumstances.
- 1.4 The objective of this decision relevant to the purpose of Local Government is to perform regulatory functions which promote the best use of natural resources and which are responsive to community needs with particular reference to providing responsive Council planning services.
- 1.5 This report concludes by recommending that the Committee receive the information and provide guidance on whether changes should be made to the Proposed District Plan to give greater protection to Te Mata Peak (ONFL1).

## 2.0 BACKGROUND

- 2.1 The Planning and Regulatory Committee meeting held on 8 February 2018 resolved the following:

- “A) That the report of the Group Manager: Planning & Regulatory titled “Te Mata Track” dated 8/02/2018 be received.*
- B) That Council come back to a joint workshop with the Maori Joint Committee to consider all options to drafting a variation to the District Plan and outlining the consultation process.*
- C) That discussions be undertaken with mana whenua on the appropriateness of identifying Te Mata as a wāhi taonga in the Proposed District Plan.*

*With the reasons for this decision being that the objective of the decision will contribute to meeting the current and future needs of communities for performance of regulatory functions in a way that is most cost-effective for households and business by:*

- i) Ensuring that the policy framework of the Proposed District Plan properly reflects the values and characteristics of the Te Mata Peak outstanding landscape ONFL1.*
  - ii) Ensuring that the matters over which council exercises its control/discretion allow for the proper assessment of the effects of activities on the outstanding landscape ONFL1”.*
- 2.2 The Outstanding Landscapes and Features of the district were first identified in the Operative District Plan. The operative district plan was informed by the Outstanding Landscapes Report which was undertaken by Isthmus Group in 1996.
- 2.3 This report identified 8 Outstanding Natural Features and Landscapes within the district including Te Mata Peak- both the west and east faces. The Isthmus Report identified that the significance of the east face of Te Mata Peak is largely derived from its sculptural and picturesque landform including “the openness and uniformity of grass cover that enables the landform shape to be appreciated and the play of light and shadow to accentuate its form”. It also identified that while Kahuranaki is the identifying Maunga for all of Ngati Kahungunu Te Mata is significant for hapu around the south east margins of the plains.
- 2.4 At the outset of the review of the District Plan it was necessary to undertake a review of the 1996 Isthmus Report to ensure that the best practice for landscape assessment, legislative changes e.g. the New Zealand Coastal Policy Statement 2010, and relevant case law, was taken into account in establishing the important landscapes of the district.
- 2.5 A new scoring method was utilised for the review of the outstanding landscapes and this was not additive as compared to the assessment undertaken in 1996. The review resulted in the retention of Te Mata Peak east



and west faces as Outstanding Natural Features and Landscapes. A Maori cultural review of the outstanding landscapes was also undertaken by Bayden Barber of Ipurangi Developments Ltd, and this was an important component of the each of the outstanding landscapes.

- 2.6 The cultural review provided the korero of all the outstanding landscapes (including Te Mata), and stated that all of the outstanding landscapes are of special significance to Maori, and should be retained as such, to protect them from development and degradation.
- 2.7 A new landscape section was drafted as a result of the review of the Outstanding Landscapes report and the accompanying cultural review.

### 3.0 CURRENT SITUATION

- 3.1 The resource consent that granted approval for the track on the east face of Te Mata Peak has raised questions as to whether the current Proposed District Plan framework adequately achieves the outcomes sought in respect of the Outstanding Natural Features and Landscapes identified in the District, particularly in respect of ONFL 1 – Te Mata Peak.
- 3.2 Te Mata Peak is primarily located within the Rural Strategic Management Area (SMA) and Zone of the District Plan. However part of the western face of the Peak is zoned Te Mata Special Character Zone and therefore lies within the Havelock North SMA. On top of these zones are the following overlays: the Te Mata Special Character Zone lifestyle limit, the Prohibited Building Area, and the Outstanding Natural Feature, Outstanding Natural Landscape areas and a Special Amenity Landscape Area (SAL6). There are also several archaeological sites noted on the planning maps across the whole of the Te Mata Peak range (however there were no mapped archaeological sites located on the site subject to the walking track application). Heritage New Zealand has subsequently stated that the archaeological sites in the vicinity of the track may not be accurately located.
- 3.3 A review of the current anticipated outcomes, objectives, policies and rules of 17.1 (Natural Features and Landscapes), and Section 27.1 (Earthworks Mineral Aggregate and Hydrocarbon Extraction) has been undertaken. Relevant extracts of these of outlined below to assist in the assessment.
- 3.4 The following are the relevant anticipated outcomes, objectives and policies for Section 17.1:

#### Anticipated Outcomes

**LSAO1** The values of important natural features and landscapes are not compromised by inappropriate building development, earthworks, and the siting of building development or plantations.

**LSAO3** There is a greater public awareness of the different landscape areas throughout the District and the activities that could have an adverse effect on the key elements, patterns and character that contribute to the significance of those landscape areas.

**LSA04** Buildings do not visually intrude on the natural form of rural and coastal ridgelines and spurs

**LSA05** Large scale earthworks do not visually intrude on the natural form of rural and coastal ridgelines, spurs and hill faces.

### 3.5 **OBJECTIVE LSO1**

*The factors, values and associations that define the District's Outstanding Natural Features and Landscapes are identified, and are protected from inappropriate subdivision, use, and development.*

### 3.6 **POLICY LSP1**

*To identify and recognise the District's Outstanding Natural Features and Landscapes by the following criteria, factors, values and associations:*

#### Explanation

- 3.7 In implementing its Landscape Areas Policy the District Plan has targeted those landscapes which are considered to be pre-eminent in the District. The District Plan schedules Outstanding Natural Features and landscapes (and ranks below this the Significant Amenity Landscapes, Rural Character Landscapes, and Coastal Character Landscapes), identified as a result of the Landscapes Assessment, as well as listing the key elements, patterns and character that contribute to their significance. All the identified landscapes are listed in Appendices 43 (ONFL), 44 (SAL), 45 (RCL), and 46 (CCL), and are shown on the Planning Maps.
- 3.8 Outstanding Natural Features and landscapes are listed in Appendix 43. Provision has been made for the protection of the particular factors, values and associations that make an area an outstanding natural feature and landscape from the adverse effects of inappropriate subdivision, use and development, throughout the District Plans rules, standards and assessment criteria.
- 3.9 The above objective and policy sets out how and why the District's ONFL's are identified and the hierarchy of landscape protection within the District Plan. The following policies provide more specific detail regarding the philosophy and rationale behind the rules within the ONFL's. Te Mata Peak is the only ONFL that has a specific policy which affords it's the highest priority for protection within the District Plan. No other Outstanding Natural Feature or Landscape within the District is singled out in this manner. The reasons for this appear to stem from its status as a landscape icon for all residents of the District and in particular Maori and the concern that there is a high probability or potential for new development activities to occur and therefore to have adverse effects on the landscape values and natural character of the Te Mata ONFL.

### **POLICY LSP2**

- 3.10 *Protection of the present landscape qualities of Te Mata Peak shall be afforded the highest priority through the District Plan.*

#### Explanation

- 3.11 Te Mata Peak is a significant landscape icon in Hawke's Bay, having District, Regional and National significance. It is the most prominent landmark in the eastern Heretaunga Plains with a distinctive silhouette skyline. It is a source of identity for hapu, Ngati Kahungunu, and the Districts residents.
- 3.12 In order to ensure the protection and integrity of the landscape, the Plan prohibits buildings associated with residential activities and visitor accommodation above and including the 240 metre contour line of the Peak. In addition, it requires that resource consent for a Non-Complying activity be obtained for all other buildings above and including the 240 metre contour line, and for all buildings greater than 50m<sup>2</sup>, network utilities, earthworks and plantations within ONFL1. The Prohibited and Non-Complying activity status of these activities provides a clear signal to the community and Council that the present landscape qualities of Te Mata Peak will be afforded the highest levels of protection.
- 3.13 Policy LSP2 above confirms an intention that earthworks (as well as other specific activities mentioned) within ONFL1 will require a non-complying activity. This intention, in respect of earthworks activities, has not been translated into the rules of Section 17.1 or Section 27.1 and therefore Policy LSP 2 is not given proper effect to.
- 3.14 Earthworks associated with new buildings up to 50m<sup>2</sup> and below the prohibited building line, and earthworks as a result of new track formation or for other recreational activity are not mentioned in the Section 17 activity table and are therefore permitted activities under this Section by Rule LS1.
- 3.15 Within the Earthworks Section 27.1, earthworks are permitted activities up to 50m<sup>3</sup> per site within ONFL's in the Havelock North SMA (Te Mata Special Character Zone) and up to 200m<sup>3</sup> (or 500m<sup>3</sup> for existing track, drain or fence maintenance) per site within ONFL's in the Rural SMA (the majority of Te Mata Peak) and subject to meeting the general performance standards and terms. Permitted activities that do not meet the standards and terms become restricted discretionary activities (Rule EM6).
- 3.16 The assessment criteria for restricted discretionary activities not meeting the standards includes the following matters:

#### EARTHWORKS WITHIN OUTSTANDING NATURAL LANDSCAPES (ONFL)

*Earthworks within an ONFL will be designed and located to minimise adverse visual effects. In particular, the extent to which any such development will:*

- (a) Where practicable, minimise the location of large scale earthworks on prominent rural ridgelines, hill faces and spurs.*
- (b) Be designed to minimise cuttings across hill faces and spurs.*
- (c) Where practicable, minimise the number of finished contours that are out of character with the natural contour.*
- (d) Demonstrate what visual mitigation is proposed to minimise the visual intrusion of the work, including proposals to ensure the successful establishment of any plantings.*

- 3.17 The list above does not refer to cultural impacts of earthworks activities on the Outstanding Natural Feature and Landscape area. All ONFL's in the District have been identified as being culturally significant landscapes in the report prepared by Ipurangi Developments Limited, in 2012. Therefore such considerations should be included in assessment criteria relating to activities within the ONFLs.
- 3.18 Appendix 43 outlines the location and extent of the ONFLs which are the most significant natural features and landscapes in Hastings District. The Appendix identifies place specific management issues which should be considered in the assessment of any activity requiring resource consent. A cross – reference to Appendix 43 would trigger the need to consider the particular issues that have been identified for each ONFL and which would provide some guidance of the types of activities that need to be carefully managed as well as outlining the particular landscape values that are sought to be retained (such as the in the case of ONFL 1 “the open rural context of the steep slopes”).
- 3.19 It may be helpful if there were more details included within Appendix 43 of the existing landscape features to be retained and specifically for ONFL1 in order to give effect to Policies LSP1 and 2 and strengthen the links between the policies and the assessment of applications. For example the evaluation summary could be included which relates back to the criteria used to identify the ONFL's. Furthermore, some of the management issues for Te Mata that were identified in the Boffa Miskell Outstanding Landscape Review report have been missed out in this Appendix and perhaps should be included. These include:
- (i) *Retention of the open character of the mid to lower slopes*
  - (ii) *Retention of the uninterrupted skyline to ensure the depiction of the sleeping Giant or ancestor is retained.*
- 3.20 The following place-specific management issues for ONFL1 are currently included in Appendix 43:
- (i) Risks of significant human induced landscape change the upper slopes of Te Mata Peak are minimal, however it is the lower slopes where management methods should be focused.
  - (ii) Management of the elevation on Te Mata for built development to maintain the open rural context of the steep slopes.
  - (iii) Retention of the open uninterrupted skyline between Te Mata and Mt Erin.
  - (iv) Land use change in particular forestry or other vegetation cover, can disrupt the legibility of the geology. Management of new forestry or plantings is needed.

**POLICY LSP3**

- 3.21 *Buildings, Plantations, Earthworks and Network Utilities will be regulated on identified Outstanding Natural Features and Landscapes throughout the District taking into account the ability of the activity to integrate into the receiving landscape and the sensitivity of that landscape.*

**Explanation**

- 3.22 The impact of different activities on the Outstanding Natural Features and Landscapes identified in Appendix 43 will vary depending on both the ability of the activity to integrate into the receiving landscape and the sensitivity of that landscape. The Plan addresses each activity differently for each of the landscape features in the District. ....
- 3.23 This policy implies that there are different activities statuses and limits set out in the Plan for Buildings, Plantations, Earthworks and Network Utilities for each ONFL. This is the case, although the appropriateness of the extent to which earthworks activities are controlled needs further consideration in light of the walking track consent and as a consequence whether the current rule structure appropriately gives effect to Policies LSP2 and LSP3.

**POLICY LSP4**

- 3.24 *Subdivision on land within an Outstanding Natural Feature and Landscape identified in Appendix 43 of the District Plan shall have regard to the impact of the subdivision or possible activities that may occur as a result of the subdivision undertaken.*

**Explanation**

- 3.25 Land subdivision often precedes land development. Subdivision activities, while not a direct use of land will involve the identification of access, building platforms, and other land development works, which may have significant impact in key landscape areas.

**POLICY LSP7**

- 3.26 *Activities that are consistent with the values and factors of Outstanding Natural Landscapes will be provided for and their contribution to the landscape recognised.*

**Explanation**

- 3.27 The identification of an outstanding natural landscape does not result in blanket restrictions on activities that can be undertaken within the identified landscape. There are instances where the type of activity that is undertaken within a landscape contributes to the values that are recognised. Agricultural activities are an example of land uses that can fit well within identified landscapes. Plantations can also be appropriate activities provided that they are consistent with values of the landscapes. The Environment Court has also acknowledged that, with due consideration given to effects on the environment, a windfarm is an appropriate land use activity on the Mangaharuru Range, in an area now recognised as ONFL6.

- 3.28 The following are the relevant anticipated outcomes, objectives and policies for Section 27.1:

**ANTICIPATED OUTCOME EMAO10**

- 3.29 *There are no adverse visual effects from large scale earthworks within the District's Outstanding Landscapes*

**OBJECTIVE EMO5** Relates to Outcome EMAO10

- 3.30 *To ensure that earthworks and mineral extraction do not compromise outstanding natural features, historic heritage and cultural heritage features (including archaeological sites).*

**POLICY EMP13** Relates to Objective EMO5

- 3.31 *Permanent visual scars resulting from earthworks and mineral extraction will be restricted on identified Outstanding Natural Landscapes throughout the District.*

Explanation

- 3.32 The impact of earthwork activities on the Outstanding Landscapes and Natural Features identified in Appendix 43 will vary depending on both the ability of the activity to integrate into the receiving landscape and the sensitivity of that landscape.

**Summary of Discussion**

- 3.33 As discussed above, there appears to be a disconnection between the anticipated outcomes, objectives and policies of Section 17 and the rules of Section 17 and 27 (particularly in respect of the activity status of earthworks within ONFL1).
- 3.34 There may need to be more consideration of activities that are not appropriate within ONFL1, and particularly on the east face of Te Mata. New tracks and earthworks associated with these are not specified in the table and as a consequence of the catchall rule LS1 are permitted activities under Section 17. They are however captured under the earthworks provisions which permits earthworks provided that the cuts are no greater than 1m or under and the volume is 200m<sup>3</sup> per site per year. There is also a rule which makes the removal of more than 100m<sup>3</sup> of soil per site a discretionary activity. Similarly, buildings under 50m<sup>2</sup> below the prohibited building line are permitted activities – this may not be appropriate on the eastern face of Te Mata in order to retain the “open rural context of the steep slopes” ; Even more so when the prohibited building line on this elevation of the peak does not cover all of the ONF (purple zone) area.
- 3.35 The cultural significance of Te Mata Peak to both Maori and all the District's residents', needs to be highlighted more. For example a change to Policy LSP2 could bring the wider cultural significance of Te Mata (while already mentioned in the explanation to the policy) into the actual policy. There is also a limitation in the matters over which Council can restrict its discretion for restricted discretionary activities affecting ONFL's. Currently discretion is not reserved over adverse cultural effects unless they are significant and they are tied more to the disturbance of archaeological sites. It would be straightforward to add additional matters of control or discretion to consider

cultural effects to both the Natural Features and Landscapes Section and also to the earthworks section of the Proposed Plan.

- 3.36 There is also no mention of earthworks or new track formation in the place specific management issues for ONFL 1. This document also identifies the risk of landscape change to the upper slopes of Te Mata Peak as minimal presumably because buildings above the 240 contour line are prohibited. However the prohibited building line does not cover all of the ONF area (as mentioned above). Consideration could be given to enlarge this prohibited building line to cover a greater area of the eastern face of Te Mata.
- 3.37 In respect of the walking track application, the permitted baseline was used to assess and justify the effects of the extent of the earthworks proposed on the ONFL. As 200m<sup>3</sup> per site per year was permitted by the Plan, the proposed level of 800m<sup>3</sup> to construct the track could therefore be undertaken as of right over a 4 year period. The impacts of the permitted baseline argument should be considered in whether 200m<sup>3</sup> per site per annum is an acceptable permitted activity limit for ONFL1. Consideration could be given to whether a statement should be included in the plan that does not allow the use of the permitted baseline argument within ONFLs. In conjunction, a change to the anticipated outcome EMAO10 *There are no adverse visual effects from large scale earthworks within the District's Outstanding Landscapes*, to remove the term “large scale” would also assist in making it clear that the permitted baseline approach is not appropriate within ONFL1.

#### 4.0 OPTIONS

- 4.1 Option 1 – Retain the current provisions of the Proposed District Plan as they apply to the Te Mata Peak Outstanding Landscape ONFL1 .
- 4.2 Option 2 – Undertake a variation to the Proposed District Plan to strengthen the policy framework with particular regard given to the cultural component of ONFL's and to include cultural in the matters over which Council exercises its control or discretion.
- 4.3 Option 3 – Undertake a variation to the Proposed District Plan to strengthen the policy framework with particular regard given to the cultural component of ONFL's and change the activity status for earthworks and subdivision in ONFL1.
- 4.4 Option 4 – Undertake discussions with hapu with mana whenua, on identifying Te Mata as a wāhi taonga in the Proposed District Plan

#### 5.0 SIGNIFICANCE AND ENGAGEMENT

- 5.1 The landscape values of Te Mata Peak and especially the east face have a high degree of significance both to tangata whenua and to the wider community. This has been clearly witnessed through the response to the construction of the track and the two petitions that were launched subsequent to this.
- 5.2 If the Committee sees the need to undertake a variation or change to the Proposed District Plan to amend the provisions of the Outstanding Landscapes and Earthworks sections, this will follow the normal consultation and notification process set down under the Resource Management Act.

## **6.0 ASSESSMENT OF OPTIONS (INCLUDING FINANCIAL IMPLICATIONS)**

### **Option 1**

- 6.1 The retention of the current provisions of the Proposed District Plan has advantages of not entering into a costly submission process for both Council and the wider community when the changes that could be undertaken are more around providing greater levels of certainty to plan users rather than being required to meet statutory responsibilities under the Resource Management Act. However the retention of the current provisions are unlikely to meet the outcome of the Local Government Act in being responsive to community needs.

### **Option 2**

- 6.2 The community has clearly identified that the effects of activities on the Te Mata Peak outstanding landscape should be carefully considered. Some of the changes need to be reflected in the policy which would apply equally to the both the east and west faces of Te Mata. It is evident that there should be some fine tuning of the current policies and rules applying to ONFL1 both to clarify the outcomes that are to be sought and to ensure that the policies better reflect the cultural importance of Te Mata Peak to tangata whenua.
- 6.3 This option does not make changes to the rule framework, but proposes to strengthen the matters over which Council will exercise its control or retain its discretion. This advantage of this option is that by retaining the existing activity status additional time and cost constraints would not be incurred by private property owners. At the same time policy and assessment criteria changes will result in a more comprehensive assessment of any resource consent application.

### **Option 3**

- 6.4 The third option involves making the necessary changes to the plan policy framework together with changing the activity status of earthworks and subdivision activities within the ONFL. This option is likely to result in a greater level of resistance from landowners as it would require much higher costs and increased time to get the activity through the consent process. It would also face a higher hurdle especially for consent if a non-complying status was applied to the activity.

### **Option 4**

- 6.5 The identification of Te Mata as a wāhi taonga is a matter that can only be advanced by the hapu with mana whenua over Te Mata. The identification of Te Mata as a wāhi taonga would immediately treat hapu as an affected party in any resource consent received by the Council. Under the current wāhi taonga provisions in Section 16 of the Proposed District Plan activities involving the excavation, modification or disturbance of the ground that would damage or destroy the wāhi taonga site would be a discretionary activity. However, as part of any discussions with mana whenua on the identification of Te Mata as a wāhi taonga it would be beneficial to understand (in the context of those currently being undertaken) the type of activities that hapu



may consider appropriate. This would allow consideration to be given to the controls that might be applied to activities without them automatically requiring resource consent as a discretionary activity.

## **7.0 PREFERRED OPTION/S AND REASONS**

- 7.1 The options are to be fully discussed at a joint workshop with Council and the Māori Joint Committee. The workshop will also discuss the consultation process that would accompany any proposed changes to the Proposed Plan provisions.

## **8.0 RECOMMENDATIONS AND REASONS**

- A) That the report of the Environmental Policy Manager titled “Te Mata Track” dated 28/02/2018 be received.**
- B) That the Committee note that it is invited to a joint workshop with Council to discuss all options prior to the drafting of changes to the Proposed District Plan provisions.**

### **Attachments:**

- |   |                                       |            |
|---|---------------------------------------|------------|
| 1 | Legal Opinion on Notification Process | 97017#0025 |
|---|---------------------------------------|------------|

# MATTHEW CASEY

## QUEEN'S COUNSEL

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30 January 2018

Hastings District Council  
Private Bag 9002  
Hastings 4156

Attention: Ross McLeod

### Te Mata Peak Walkway – Review of Notification Decision RMA 20170324

#### Introduction

1. You have requested a legal review of the decision not to notify the application by Craggy Range for a walkway on the eastern face of Te Mata Peak (the **Walkway**). The decision was made under delegated authority by the Environmental Consents Manager (**Decision**). The Decision followed (and adopted) a report prepared by a Senior Environmental Planner (**Report**).
2. This opinion considers whether the process followed was correct and appropriate. We have also taken into account the letter from Holland Beckett dated 20 December 2017 and the report by Cato Bolam which comment on the application process.
3. This opinion does not include a critique of the Proposed Hastings District Plan (**Plan**), or consider changes that might be made if the Council has concerns about the outcome of the process. It is important to note that when assessing the Application and making the Decision, the Council and its officers were required to apply the Plan according to its provisions.

#### Background

4. The application for subdivision and land use consent was lodged on 31 August 2017 and included an assessment of environmental effects (AEE) prepared by Craggy Range's planning consultant, Development Nous. Its assessment was that the adverse effects on the environment would be less than minor, and that there were no 'affected parties'. The applicant did not request notification and the letter accompanying the application was on the basis of it being for a non-notified consent.
5. An initial assessment was undertaken by the processing officer and a request for further information was issued. The s 92 request covered landscape and visual amenity effects and required a qualified and experienced landscape architect to assess these, and to address the relevant provisions of the Plan.
6. Craggy Range responded with an updated AEE and a landscape assessment prepared by Hudson Associates, a reputable landscape architect consultancy. The revised AEE again assessed the effects as less than minor. The Hudson assessment considered both the Plan and a 2013 Boffa Miskell Review which informed the landscape provisions of the Plan. It concluded that the landscape and visual amenity effects would be less than minor, and that the proposal was not contrary to the Plan's objectives and policies.
7. The Report was then prepared, based (inter alia) on the Hudson assessment. It recommended that the application not be notified and that the consents be granted. On 16 October 2017 the decisions were made not to notify the application, and to grant the consents, subject to conditions.

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**Legal context**

8. The Decision was made 2 days before the notification provisions of the Resource Management Act 1991 were largely replaced by the Resource Legislation Amendment Act 2017. The relevant version of sections 95A – 95E RMA is that which applied until 18 October 2017, and this is the version referred to in the Report and in this advice.
9. Section 95A (in force at the relevant time) gives the Council a discretion whether or not to publicly notify an application. That discretion is qualified by sub-sections (2) and (3), of which only sub-s (2) was relevant to the Walkway. Under sub-s (2) the application *must* be publicly notified if (inter alia) the Council decides that the adverse effects of the activity will be (or will likely be) more than minor.
10. When deciding on the scale of effects (i.e. more than minor, minor or less than minor) the Council may disregard an adverse effect where the Plan permits an activity with that effect. This is commonly referred to as the ‘permitted baseline’. This is a discretionary consideration (i.e. the Council can decide not to apply it) which we discuss further below.
11. In this case the officer treated the consents as ‘bundled’ and therefore the assessment was as for a ‘non-complying’ activity. In our view this was the correct approach to take. In that situation, all effects must be considered, even where one of the included activities would, on its own, be a restricted discretionary activity.<sup>1</sup>
12. The key statutory test for public notification is whether the activity will have or is likely to have adverse effects on the environment that are more than minor – if so, public notification is mandatory. In this case the Report concluded that the adverse effects were not more than minor.

**Adequacy of information**

13. As part of our review, we have considered whether the Council had sufficient information on which to conclude that the activity would not have more than minor adverse effects.
14. In terms of landscape and visual amenity effects, the officer did not take the AEE’s assessment of the Walkway’s effects at face value, but requested an expert landscape assessment. That assessment expressed the conclusion that the landscape and visual amenity effects would be less than minor. The officer’s Report refers to the Hudson assessment in a number of places as a basis for concluding that the activity would have no more than minor effects.
15. If the Decision was challenged on the basis of insufficient information as to visual and amenity effects, the Hudson assessment would be sufficient to refute that argument. The court might consider that it was not reasonable to rely only on the landscape assessment, given some of its conclusions were somewhat subjective and open to different opinions. However, the assessment was by a reputable and experienced consultancy, and was thorough. The assessment considered the relevant Plan provisions and, on its face, did not omit any relevant matter.
16. The more significant potential issue is the lack of information about effects on cultural values associated with Te Mata Peak. The application’s discussion of cultural effects was confined to identifying 3 recorded archaeological sites, which, it said, would not be affected by the proposal. The AEE concluded that “*the proposed subdivision will have no cultural or spiritual effects on the environment*” (p17). There was no s 92 request for further information on cultural effects.

<sup>1</sup> In the case of a restricted discretionary activity, the Council ‘must disregard’ an adverse effect that does not relate to the matter(s) in respect of which the discretion is reserved.

17. Te Mata Peak is not identified as a listed waahi tapu (or waahi taonga) site in the District Plan, however the scheme of the Plan is to encompass cultural values associated with landscapes in the Natural Features and Landscapes section. The Plan identifies Te Mata Peak as being of significance to Ngati Kahungunu, and the background reports to the identification of Te Mata as ONFL1 set out the stories attributed to Te Mata by iwi. It concludes that *"it is critical that [the ONFL in the Plan] are protected from development and degradation"*.<sup>2</sup>
18. The potential for cultural effects ought to have been expressly considered, particularly given the flagging in the Plan of the Peak's importance to Ngati Kahungunu. The lack of information on this topic would likely be a cause for concern for a court reviewing the Decision.

***Reasonableness of conclusions on adverse effects***

19. We have also considered whether the conclusion that the environmental effects of the proposal would be no more than minor was one that could reasonably have been reached.
20. Cultural effects appear not to have been fully considered, and any effects assumed to be no more than minor, on the basis that Te Mata Peak was not a listed waahi tapu (or waahi taonga). Craggy Range's AEE addressed cultural effects and found that there were none. Both the AEE and the Report noted that the Plan provides specific protection for certain sites, and that these would be unaffected.
21. However, s 6(e) RMA requires consideration of the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga, as a matter of national importance. A broader consideration of potential adverse cultural effects would have been appropriate.
22. We also have concerns about reliance on the permitted baseline for the conclusion that landscape and visual effects were minor. This included consideration of the fact that the track could have been constructed, as a permitted activity, over 4 years; and that if lot 2 was vested as a public reserve the recreational activity would also be a permitted activity.
23. The policy in the Plan of limiting earthworks in ONLs and prioritising protection of Te Mata Peak, and the relevance of s 6 RMA, arguably made use of the permitted baseline inappropriate in this case, or at least warranted more careful consideration before relying on it.
24. However, even if use of the permitted baseline was inappropriate, this aspect may not be fatal as the conclusions were not dependent on the application of the permitted baseline.
25. Another listed reason for concluding effects would be minor is that *"There are already many existing similar tracks contained within the ONFL1 and greater Te Mata Peak form"*. This reason warranted more careful consideration, such as whether current tracks were visually appropriate, whether there would be cumulative effects and whether there were relevant differences between the proposed and existing tracks.
26. While these factors are not expanded on in the Report, it does not necessarily follow that they were not considered by the officer when preparing it. However, on its face it appears from the Report that they might not have been considered.
27. These factors were only a small part of a wider decision, however in combination they may lead to a view that the conclusion was not a reasonable one in all the circumstances.

<sup>2</sup> "Outstanding Natural Landscapes – a Maori cultural review of current schedule of Outstanding Natural Landscapes", Ipurangi Developments Ltd, October 2012.

**Relevance of objectives and policies**

28. The notification assessment in the Report does not discuss objectives and policies of the District Plan. We consider these should have been considered, particularly Policy LSP2 which provides “*Protection of the present landscape qualities of Te Mata Peak shall be afforded the highest priority through the District Plan*”.
29. While s 95A RMA refers only to effects and not to objectives and policies, it would have been appropriate to consider those which promoted protection of Te Mata Peak, either in bringing the correct focus on the effects of the proposal, and/or under the exercise of the discretion, as discussed below. Failure to refer to them at all in the notification assessment could make the decision vulnerable to challenge. Against this, however, was the requirement in the s 92 request for assessment against the Plan provisions, and the fact that these were considered in the Hudson assessment.

**Special Circumstances**

30. The question of ‘special circumstances’ arises only where notification is precluded by a rule in the Plan. The Report considered whether special circumstances applied, and found they did not. The correct question, however, was whether the Council ought to exercise its discretion under s 95A to notify the application. Similar considerations apply to the question of special circumstances and the exercise of discretion.
31. In deciding whether the application ought to have been notified as a matter of discretion, the Report should, in our view, have considered matters such as the priority afforded to Te Mata Peak in the Plan, particularly in Policy LSP2 and its Explanation. The fact that the proposal was affecting the most prominent landmark in the District, with recognised importance to residents, should have been taken into account when considering whether notification was warranted.

**Conclusion**

32. We have identified a number of areas where the Report is not as thorough as it could have been, and which could make the Decision potentially open to challenge by judicial review. The Court’s review goes to the process followed, not the outcome. In other words, the Court cannot decide that the decision was wrong, only that it was ‘unlawful’ in the sense that proper process was not followed.
33. The fact that there were errors in the approach taken in the Report does not, of itself, mean that the Decision was wrong and the application should have been notified. It also does not mean that the substantive decision to grant consent was wrong. Even where a Court finds that a decision was unlawful, it will refer the matter back to the Council for reconsideration on the correct basis. If reconsideration meant that notification was required, the Walkway might still ultimately be approved, depending on further information made available through the submission process.
34. The Court has a discretion to refuse relief, particularly where reconsideration would be futile. In this case, the consent has been given effect to and the Walkway constructed. The Court usually has no interest in deciding a case that has become moot. For this reason we consider any challenge by way of Court action would be unlikely to succeed, notwithstanding possible deficiencies in processing the consents.
35. The 2017 amendments to the notification provisions of the RMA make some of the above analysis and comments redundant in the case of future applications. Changes were made to the notification provisions to reduce uncertainty and avoid challenges. There is now a prescribed ‘step-by-step’ process, with no overall discretion.
36. We understand the Council is considering changes to the Plan to better reflect the importance of Te Mata Peak, which is appropriate in light of the removal of that general discretion.

MATTHEW CASEY QC

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37. We are happy to discuss this opinion with you further.

Yours faithfully



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**REPORT TO:** HDC - MĀORI JOINT COMMITTEE

**MEETING DATE:** WEDNESDAY 28 FEBRUARY 2018

**FROM:** DEMOCRATIC SUPPORT MANAGER  
JACKIE EVANS

**SUBJECT:** PROPOSED WORKSHOP

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## **1.0 INTRODUCTION**

- 1.1 The purpose of this report is to advise members of the HDC : Maori Joint Committee that a workshop will be held on Thursday, 29 March 2018 at 10.30am in the Council Chamber.
- 1.2 Please provide feedback at the meeting in regard to the content of the Workshop and the workplan for the Committee.

## **2.0 RECOMMENDATION**

**That the report of the Democratic Support Manager titled “Proposed Workshop” dated 28 May 2018 be received.**

### **Attachments:**

There are no attachments for this report.