



Hastings District Council

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OPEN A G E N D A

PLANNING AND REGULATORY COMMITTEE MEETING

Meeting Date: **Thursday, 8 February 2018**

Time: **1.00pm**

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

Committee Members	Chair: Councillor Lyons Mayor Hazlehurst Councillors Barber, Dixon, Harvey, Heaps (Deputy Chair), Kerr, Nixon, O'Keefe, Poulain, Redstone, Schollum, Travers and Watkins. (Quorum = 8)
Officer Responsible	Group Manager: Planning and Regulatory Services – Mr J O'Shaughnessy
Committee Secretary	Christine Hilton (Ext 5633)

Planning and Regulatory Committee – Terms of Reference

Fields of Activity

Oversight of all matters relating to the Council's planning and regulatory functions and the development of policies and strategies in relation to those functions. The matters within this committee's responsibilities include (but are not limited to):

- Resource Management Act 1991
- Building Control including the Building Act 2004 and the New Zealand Building Code
- Bylaws
- Health Act 1956
- District Plan
- Historic Places Act 1993
- Security Patrol
- Maritime Planning Schemes

Other regulatory matters including:

- Animal and pest control,
- Dangerous goods and Hazardous substance,
- Fencing of swimming pools,
- Litter,
- Alcohol,
- Noise abatement,
- Public health and safety,
- Prostitution,
- Gambling,
- Parking control.
- Responsibility for all matters related to the District's environment including the environment of neighbouring districts and water bodies
- Other Regulatory matters not otherwise defined.

Membership

Chairman appointed by the Council
Deputy Chairman appointed by the Council
The Mayor
All Councillors

Quorum – 8 members

DELEGATED POWERS

General Delegations

1. Authority to exercise all of Council powers, functions and authorities (except where delegation is prohibited by law or the matter is delegated to another committee) in relation to all matters detailed in the Fields of Activity.
2. Authority to re-allocate funding already approved by the Council as part of the Long Term Plan/Annual Plan process, for matters within the Fields of Activity provided that the re-allocation of funds does not increase the overall amount of money committed to the Fields of Activity in the Long Term Plan/Annual Plan.
3. Responsibility to develop policies, and provide financial oversight, for matters within the Fields of Activity to provide assurance that funds are managed efficiently, effectively and with due regard to risk.
4. Responsibility to monitor Long Term Plan/Annual Plan implementation within the Fields of Activity set out above.

Bylaws

5. Authority to review bylaws and to recommend to the Council that new or amended bylaws be made including but not limited to the review of bylaws made pursuant to rules under the Land Transport Act 1998, (primarily relating to speed limits) and bylaws relating to parking.

Legal proceedings

6. Authority to commence, compromise and discontinue mediations, legal proceedings, prosecutions and other proceedings within the Fields of Activity.

Fees and Charges

7. Except where otherwise provided by law, authority to fix fees and charges in relation to all matters within the Fields of Activities.

Resource Management/Environmental issues

8. Authority to make submissions on behalf of the Council in respect of any proposals by another authority under any legislation, or any proposed statute which might affect the District's environment or the well being of its residents including such matters as adjacent local authorities' district plans, any regional policy statement, and Regional Plans.

HASTINGS DISTRICT COUNCIL
PLANNING AND REGULATORY COMMITTEE MEETING
THURSDAY, 8 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 Planning and Regulatory Committee Meeting held Thursday 16 November 2017.
(Previously circulated)

4.	Parking Controls	7
5.	Te Mata Track	19
6.	Additional Business Items	
7.	Extraordinary Business Items	

REPORT TO: PLANNING AND REGULATORY COMMITTEE

MEETING DATE: THURSDAY 8 FEBRUARY 2018

FROM: SPECIAL PROJECTS AND PARKING MANAGEMENT ASSISTANT
KEVIN DEACON

SUBJECT: PARKING CONTROLS

1.0 SUMMARY

- 1.1 The purpose of this report is to obtain a decision from the Committee on a number of changes to parking controls throughout the District.
- 1.2 The proposals arise from requests for new parking controls and an amendment to an existing control.
- 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 the provision of quality infrastructure and local public service.
- 1.5 This report concludes by recommending ;
 - A) That a 60 minute time limit be established on Avenue Road East
 - B) That a 5 minute time limit be established on school days on Karamu Road South.
 - C) That the 60 minute time limit on Queen Street East be revoked and a 120 minute time limit be established.
 - D) That a Loading Zone be established on Queen Street East
 - E) That the Loading Zone on Avenue Road East have a 5 minute time limit added.

2.0 BACKGROUND

- 2.1 From time to time it is necessary to introduce parking controls and or amend those that are already in place.
- 2.2 In order that the changes are legally established these need to be formally resolved by Council.
- 2.3 The following table provides the background and current situation relevant to the various changes being proposed:

Avenue Road East

Officers were approached by the owner of Best-Forsyth Electrical, at 404 Avenue Road East, advising that due to all-day parking by those working in the immediate area, that customers and couriers were finding it difficult to access the business.

An occupancy survey was carried out from Monday 18 September to Friday 22 September 2017 which showed the overall average to be 93%.

It is generally accepted as a national standard that if occupancy levels are in excess of 85% a motorist will normally have difficulty finding a carpark within close proximity to their destination.

Individual carparks have been subsequently marked on the road to maximise the on-street parking, but it is proposed that 2 spaces directly outside the business have a 60 minute time limit established to provide regular turnover of the spaces, thus enabling ready access for customers and delivery vehicles- **see Attachment 1.**

Karamu Road South-Hastings Central School

The management at Hastings Central School have approached Council expressing concern that there is a lack of parking near the school entrance for parents/caregivers to deliver and collect students from the school.

An occupancy survey was carried out from Monday 30 October to Friday 3 November 2017, which showed an overall average of 76% for the immediate area.

The survey showed that there were a number of vehicles parking in the area all day and therefore making it difficult for parents/caregivers to access parking near the school entrance.

It is proposed to establish a 5 minute time limit, for 6 spaces, to apply from 8.00am to 9.00am and 2.30pm to 3.30pm on school days, being similar to parking controls that currently exist at a number of schools throughout the District – **see Attachment 2.**

Queen Street East

Officers have been approached by the management at Fernridge Fresh, who are based in the new office complex at 308 Queen Street East, requesting that the 60 minute time limit in front of the offices be extended.

They have found that many of their meetings with clients extend beyond the one hour time limit and as a result their clients have incurred infringement

notices.

They advised that their business also generates a number of courier movements on a daily basis and especially during the export season and suggested that a Loading Zone be established to help Couriers and delivery vehicles to gain ready access to the complex.

It is proposed that the existing 60 minute time limit be extended to 120 minutes and that a Loading Zone be established central to the office complex's main entrance-**see Attachment 3.**

Avenue Road East-Bay Plaza

At the Planning and Regulatory Committee meeting on 11 February 2014, it was resolved to establish a new Loading Zone and to also extend an existing Loading Zone on Avenue Road East, following the upgrade of the Bay [K Mart] Plaza –**see Attachment 5.**

While the Loading Zones were formally resolved, there were no time limits included in the resolutions.

All other Loading Zones throughout the district have a 5 minute time limit and for consistency it is proposed that the two areas in Avenue Road now have the same time limit added.

3.0 OPTIONS

3.1 The options available to Council are to:

A) Approve the changes being proposed

OR

B) Not approve all or some of the changes being proposed

4.0 SIGNIFICANCE AND ENGAGEMENT

4.1 The matters in this report are not significant in terms of Council's Significance Policy.

4.2 Avenue Road East

Because the 2 parking spaces, proposed to have a 60 minute time limit, are directly outside the business that has requested the controls be established, no other businesses in the area are likely to be affected and no other consultation has been undertaken.

4.3 Karamu Road South- Hastings Central School

The request for the parking controls has come from the school management and because there are no other businesses in the immediate area, no other consultation has been undertaken.

4.4 Queen Street East

Following the request for the time limit to be extended and for a Loading Zone to be established, a letter was delivered to each of the other 8 businesses occupying office space in the new complex.

All but one business has responded to the letter.

All businesses supported extending the time limit and all but one business supported establishing a Loading Zone, while 5 of the 8 businesses supported the time limit being extended to 120 minutes the remaining 3 were wanting it extended to 180 minutes - see **Attachment 4**.

4.5 Avenue Road East- Bay Plaza

Because identifying the Loading Zone as having a 5 minute time limit is just a formality no consultation was deemed necessary.

5.0 ASSESSMENT AND PREFERRED OPTIONS

5.1 Avenue Road East

Officers support the introduction of the time limit for the 2 carpark spaces.

It will help to provide ready parking for customers, couriers and delivery vehicles wanting to access the Best-Forsyth office and workshop by ensuring that there is a regular turnover of the spaces.

5.2 Karamu Road South- Hastings Central School

Officers support the introduction of the time limit.

It replicates time limits that apply at other school entrances throughout the district and it will ensure that there is a regular turnover of the spaces in turn providing the opportunity for parents/caregivers to park close to the school entrance when dropping off or picking up their children.

5.3 Queen Street East

Officers support extending of the time limit in this section of Queen Street and establishing a Loading Zone.

This will provide parking that will meet the needs of the businesses that are operating out of the newly established complex.

5.4 Avenue Road East - Bay Plaza

Introducing the 5 minute time limit will bring the two parking areas in line with the other Loading Zones that exist throughout the district.

6.0 RECOMMENDATIONS AND REASONS

- A) That the report of the Special Projects and Parking Management Assistant titled "Parking Controls" dated 8/02/2018 be received.**
- B) That the Council resolve pursuant to Clause 5.3.1(a)(i) of Chapter 5 (Parking and Traffic) of the Hastings District Consolidated Bylaw 2016, that 2 carpark spaces on the northern side of Avenue Road East, commencing at a point approximately 53.6 metres from the intersecting kerbline with Hastings Street North and extending in an easterly direction for approximately 11 metres be resolved to have a 60 minute time limit.**
- C) That the Council resolve pursuant to Clause 5.3.1(a)(i) of Chapter 5 (Parking and Traffic) of the Hastings District Consolidated Bylaw 2016, that 6 carpark spaces on the eastern side of Karamu Road South, commencing at a point approximately 17.7 metres from the intersecting kerbline with Southampton Street East and extending in an southerly direction for approximately 34.3 metres be resolved to have a 5 minute time limit between 8:15am to 9am and between 2.45pm to 3:30pm on school days.**
- D) That the Council resolve pursuant to Chapter 5(Parking and Traffic) of the Hastings District Council Consolidated Bylaw 2016, that the one hour time limit applying to all the parking on Queen Street East, between Hastings Street North and Warren Street North be revoked.**
- E) That the Council resolve pursuant to Clause 5.3.1(a)(i) of Chapter 5 (Parking and Traffic) of the Hastings District Consolidated Bylaw 2016, that all the parking on Queen Street East, between Hastings Street North and Warren Street North be resolved to have a 120 minute time limit.**
- F) That the Council resolve pursuant to Clause 5.3.1(a)(iv) of Chapter 5 (Parking and Traffic) of the Hastings District Consolidated Bylaw 2016, that one carpark space on northern side of Queen Street East, commencing at a point approximately 58 metres from the intersecting kerbline with Hastings Street North and extending in a westerly direction for approximately 9.5 metres be resolved to be a Loading Zone with a 5 minute time limit.**
- G) That the Council resolve pursuant to Clause 5.3.1(a)(iv) of Chapter 5 (Parking and Traffic) of the Hastings District Consolidated Bylaw 2016, that the Loading Zone on northern side of Avenue Road East, commencing at a point approximately 49 metres from the intersecting kerbline with Karamu Road North and extending in a westerly direction for approximately 2.5 metres be resolved to have a 5 minute time limit.**
- H) That the Council resolve pursuant to Clause 5.3.1(a)(iv) of Chapter 5 (Parking and Traffic) of the Hastings District Consolidated Bylaw**

2016, that the Loading Zone on the northern side of Avenue Road East, commencing at a point approximately 85.2 metres from the intersecting kerbline with Karamu Road North and extending in a westerly direction for approximately 7 metres be resolved to have a 5 minute time limit.

With the reasons for this decision being that the objective of the decision will contribute to the performance of regulatory functions in a way that is efficient and effective and appropriate to present and future circumstances by:

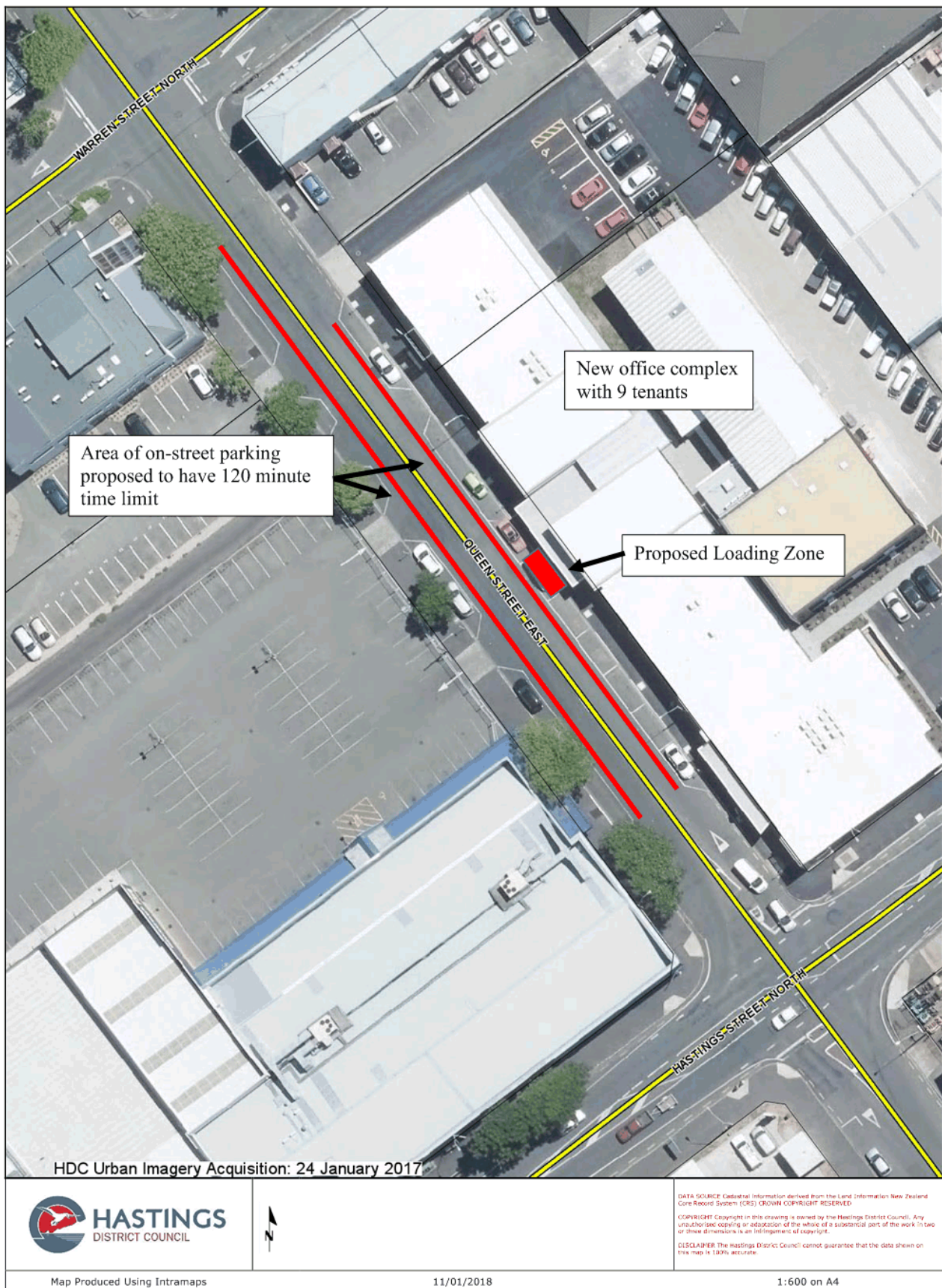
- i) Providing parking spaces in relevant places within the district that are safe and readily available to motorists.

Attachments:

1	Avenue Road East Time Limit	REG-22-03-12-18-415
2	Karamu Road South Time Limit	REG-22-03-12-18-416
3	Queen Street East Time Limit and Loading Zone	REG-22-03-12-18-417
4	Queen Street Consultation	CG-14-4-00054
5	Avenue Road East Loading Zones	REG-22-03-12-18-418







Queen Street East Parking Time Limit Consultation								
	Company Name	Support extending the time limit		Preferred length of stay		Support Loading Zone		Comments
		Yes	No	P120	P180	Yes	No	
1	Logan Stone Ltd	√		√		√		We have client meetings that go beyond one hour but rarely 2 hours. Our clients need to be able to park close to the offices and not incur infringements.
2	Resource Development Contractors Ltd (RDCL)	√			√	√		
3	Jackson's HVAC	√			√	√		
4	Fernridge Fesh	√			√	√		
5	Moore Stephens Markhams HB Ltd	√		√			√	The couriers will not want to park any distance from where they deliver. For instance they drive and park on the footpath in front of our office when they want to and having a loading zone 50 metres away wont change that.
6	Audit Hawkes Bay Ltd	√		√		√		
7	VO2	√		√		N/A		Couriers deliver to their back door
8	Creatus Group	√		√		√		
9	Stata Group							No return



REPORT TO: PLANNING AND REGULATORY COMMITTEE

MEETING DATE: THURSDAY 8 FEBRUARY 2018

FROM: GROUP MANAGER: PLANNING & REGULATORY
JOHN O'SHAUGHNESSY
SENIOR ENVIRONMENTAL PLANNER (POLICY)
ANNA SUMMERFIELD

SUBJECT: TE MATA TRACK

1.0 SUMMARY

- 1.1 The purpose of this report is 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 and to seek guidance on whether changes need to be made to the Proposed Plan to better safeguard the cultural and visual values of Te Mata Peak.
- 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 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.
- 2.2 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.

- 2.3 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.
- 2.4 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.
- 2.5 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.
- 2.6 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.

LSAO4 Buildings do not visually intrude on the natural form of rural and coastal ridgelines and spurs

LSAO5 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 50m², 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 50m² 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 50m³ per site within ONFL's in the Havelock North SMA (Te Mata Special

Character Zone) and up to 200m³ (or 500m³ 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 200m³ per site per year. There is also a rule which makes the removal of more than 100m³ of soil per site a discretionary activity. Similarly, buildings under 50m² 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 200m³ per site per year was permitted by the Plan, the proposed level of 800m³ 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 200m³ 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 preferred option is Option 2 as this option does not change the activity status for landowners but will apply a list of matters that Council can exercise its control/ discretion over that more comprehensively covers the effects that have been raised in the construction of the Craggy Range track.
- 7.2 Any variation to the Proposed Plan will be subject to a full Section 32 evaluation which will look at the options and the costs and benefits of this option versus others.
- 7.3 This option will not impose any greater restrictions on landowners but will ensure that the appropriate level of scrutiny is applied to any future resource consent application.

8.0 RECOMMENDATIONS AND REASONS

- A) That the report of the Group Manager: Planning & Regulatory titled “Te Mata Track” dated 8/02/2018 be received.
- B) That the Environmental Policy Team be tasked with drafting a variation to the Proposed District Plan (including the Section 32 Analysis) based on Option 2 which will be brought back to Council for consideration and notification.
- 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.

Attachments:

1 Legal Opinion on Notification Process

97017#0025

MATTHEW CASEY

QUEEN'S COUNSEL

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.¹
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.

¹ 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"*.²
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.

² "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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Item 5

Attachment 1