

WANGANUI DISTRICT COUNCIL

Subject: Plan Change 37 – Papakainga

Decisions on Submissions

Meeting Date: 4th November 2014

1.0 INTRODUCTION

- 1.1 The Resource Management Act 1991 (RMA) requires each part of the District Plan to be reviewed not later than 10 years after the Plan becomes operative. The Plan was made operative on 27 February 2004. In accordance with Section 73(3) of the RMA, Council is presently reviewing the District Plan in Phases. This Plan Change is part of a series of changes proposed as part of Phase 5.
- 1.2 This report records the public notification and hearing process in relation to Plan Change 37. It records the Statutory Management Committee’s recommendations and Council’s decisions on submissions.

2.0 PROCEDURAL MATTERS

- 2.1 The Committee was convened to hear submissions on 4th November 2014. No submitters wished to be heard, and no additional material was tabled.
- 2.2 The Committee members were: Councillors Hamish McDouall (Chair), Helen Craig, and Independent Commissioners Jill Sheehy, Jenny Tamakehu and Alan Taylor.
- 2.3 Plan Change 37 was publicly notified in accordance with Clause 5 of the 1st Schedule of the RMA on Thursday 1 May 2014, with the period for submissions closing on 4 June 2014. A total of 5 submissions, were received at the close of submissions.
- 2.4 All submissions received were summarised and the decisions requested by submitters were publicly notified in accordance with Clause 7 of the First Schedule of the RMA. The further submission process closed on Wednesday 9 July 2014. No further submissions were received.

3.0 SCOPE OF THE PROPOSED PLAN CHANGE

- 3.1 The purpose of Proposed Plan Change 37 (PC37) is to amend existing District Plan provisions to make the development of Papakainga on ancestral land a permitted or controlled activity.
- 3.2 Changes to the District Plan text recommended to Council as a result of submissions are included as marked up text in Appendix 3.

4.0 RELEVANT STATUTORY CONSIDERATIONS

4.1 Resource Management Act 1991 (RMA)

Section 74 of the Act requires the Council to change the District Plan in accordance with its functions under Section 31, the purpose of the Act in section 5 and the other matters under sections 6, 7 and 8.

Territorial authorities have the following functions under the Act:

31 Functions of territorial authorities under this Act

1. Every territorial authority shall have the following functions for the purpose of giving effect to this Act in its District:

a. The establishment, implementation, and review of objectives, policies and methods to achieve integrated management of the effects of the use, development or protection of land and associated natural and physical resources.

b. The control of any actual or potential effects of the use, development, or protection of land, including for the purpose of –

i. the avoidance or mitigation of natural hazards

2. The methods used to carry out any of the functions under subsection (1) may include the control of subdivision.

The Council is given these functions for the purpose of promoting the sustainable management of natural and physical resources, which is defined in section 5(2) as:

In this Act, “sustainable management” means managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural wellbeing and for their health and safety while:

a. Sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and

b. Safeguarding the life-supporting capacity of air, water, soil and ecosystems; and

c. Avoiding, remedying, or mitigating any adverse effects of activities on the environment.

Further guidance and direction on the way in which resources are to be managed is provided in sections 6, 7 and 8 of the Act.

4.2 National Policy Statements and Environmental Standards

There are no NPS or NES relevant to Plan Change 37.

4.3 Part II Considerations

The relevant statutory considerations in relation to these submissions are whether the outcomes will be consistent with sections 31 and 32 of the Act, along with Part II of the Act. The recommendations in section 8 are considered both effective and efficient and will ensure that the methods contained in this section are the most appropriate for achieving the objectives of the Plan. This section of the Plan is considered appropriate under Part II of the Act in achieving sustainable management within the Wanganui District.

4.4 Horizons Regional Council – Regional Policy Statement

Section 75(2) of the RMA requires that a District Plan must not be inconsistent with the regional policy statement or any regional plan. Horizons Regional Council's One Plan is considered to be relevant to this Proposed Plan Change in that it relates to Tangata Whenua.

- An assessment of how the provisions in Proposed Plan Change 37 compare with the Objectives and Policies of the Operative Regional Policy Statement and the Proposed One Plan are considered in **Table 1** below.

Table 1

Regional Policy Statement (operative)		Proposed Plan Change 37
Objectives	Policies	Evaluation
<p>Objective 3 To provide for the relationship of nga hapu and nga iwi of the Manawatu-Wanganui Region and their culture and traditions with their ancestral lands, water, sites, waahi tapu and other taonga.</p> <p>Objective 4 To recognise iwi and hapu Kaitiakitanga.</p>	<p>Policy 3.2 To recognise the spiritual link nga hapu and nga iwi of the Manawatu-Wanganui Region have with their ancestral lands, water, sites, waahi tapu and other taonga and the special relationship that implies.</p> <p>Policy 4.3 To recognise the tangata whenua status of nga hapu and nga iwi of the Manawatu-Wanganui Region over their ancestral lands, water, sites, waahi tapu and other taonga.</p>	<p>Plan Change 37 gives effect to the objective and policies by recognising the special relationship of Tangata whenua with their ancestral land.</p>

Proposed One Plan	Proposed Plan Change 37	
<p>Objective 4-1: Resource management <i>Whāinga 4-1: Te</i></p>	<p>Policy 4-1: <i>Hapū</i>* and <i>iwi</i>* involvement in resource management</p>	<p>Evaluation</p>

<i>whakahaere rauemi</i>	<i>Kaupapa 4-1: Te whakauru mai o ngā hapū me ngā iwi ki roto i te whakahaere rauemi</i>	
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<p>(a) To have regard to the <i>mauri*</i> of <i>natural and physical resources</i>[^] to enable <i>hapū*</i> and <i>iwi*</i> to provide for their social, economic and cultural wellbeing.</p> <p>Te Ao Māori</p> <p><i>Kia aro atu ki te mauri o ngā rauemi māori - ōkik o hoki - hei oranga hāpori, ōhanga hoki, tikanga hoki mō ngā hapū me ngā iwi.</i></p> <p>(b) <i>Kaitiakitanga</i>[^] must be given particular regard and the relationship of <i>hapū*</i> and <i>iwi*</i> with their ancestral <i>lands</i>[^], <i>water</i>[^], <i>sites*</i>, <i>wāhi tapu*</i> and other <i>taonga*</i> (including <i>wāhi tūpuna*</i>) must be recognised and provided for through resource management processes.</p> <p><i>Ka mate ka tino arohia te kaitiakitanga, ā, ka mate ka whakamanatia te hononga o ngā hapū me ngā iwi ki ō rātou whenua tūpuna, wai, papa, wāhi tapu hoki me ētahi atu taonga (pērā i ngā wāhi tūpuna), ā, ka whakaratongia mā ngā tukanga whakahaere rauemi.</i></p>	<p>The Regional Council must enable and foster <i>kaitiakitanga</i>[^] and the relationship between <i>hapū*</i> and <i>iwi*</i> and their ancestral <i>lands</i>[^], ...</p> <p><i>Ka mate ka tutuki i te Kaunihera ā-Rohe - ka atawhaitia hoki - te kaitiakitanga me te hononga o ngā hapū me ngā iwi ki ō rātou whenua tūpuna, ...</i></p>	<p>Plan Change 37 gives effect to the objective and policy by recognising the special relationship of Tangata whenua with their ancestral land.</p>
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4.5 Section 32 Evaluation

As there has been only one minor amendment to Proposed Plan Change 37, the S32 report has not been re-evaluated. The Section 32 report is attached as Appendix 3.

5.0 SUMMARY OF SUBMISSIONS

5.1 Refer to Appendix 1 to this report for a summary of each submission.

6.0 PRINCIPAL ISSUES IN CONTENTION

The submitters identified the following concerns about the Plan change:

6.1 Submitters requested a number of minor changes to clarify the intent of the plan change.

7.0 SUMMARY OF EVIDENCE HEARD

7.1 **No information was heard in addition to the submissions and Officer's report.**

7.2 **Key evidence presented in the Officer's report:**

Planning Officer's Review

The Reporting Officer explained that a lengthy process had been worked through with Iwi of the District to look at how to facilitate and empower different groups to be free to make use of ancestral land. The main thrust of the provisions was that there would be freedom for ancestral landowners to develop and use their land in a way that recognised that they have a special relationship with their land. The District Plan rules, would treat the outer boundaries of ancestral land as one property, called the 'outer boundary'. Activities within that land, such as housing, marae, or any other purpose would be assessed in terms of its resource management effect beyond that outer boundary. Council Health and safety and Building Act requirements would still apply..

The Committee's attention was drawn to the marked-up text and it was identified that some uncertainty existed about how 'outer boundary' could be interpreted.. Papakainga provisions would in all zones, and that rules for height, noise and parking etc, all apply but only at the outer boundary. Without a definition for 'outer boundary' there could be confusion due to inconsistencies or lack of clarity within the existing Plan provisions for each zone.

A proposed definition of outer boundary and an amendment to the definition of site was tabled.

"Proposed amendments:

Definitions:

Outer Boundary *means one or more of the legal boundaries of the ancestral land subject of a particular papakainga development.*

Site *means an area of land which is held, or is capable of being disposed of, under separate ownership of title. In relation to papakainga development means the entire area of ancestral land included within the outer boundary. The term 'on-site' shall also take the same meaning for papakainga development.*

Boundary means the surveyed lines which show the spatial extent of the site.”

The Reporting Officer advised that if the Committee choose to accept this amendment it should be adopted as part of Submission 37.1 (Moari Maraea Bailey). In reply to Cr Craig's query, Ms O'Shaughnessy said if adopted it would be included in Chapter 13: Definitions.

The Chair referred the Committee to the submissions analysis and asked Ms O'Shaughnessy to speak to the analysis.

Submission 37.1: Moari Maraea Bailey – A small addition was recommended for papakainga definition in relation to community development. This submission provided a lot of context and explanation around the work that had been undertaken. Although the wording had not been literally picked up, the intent of the wording is captured in the proposed objectives and policies.

Submission 37.2: Chris Shenton for Te Runanga O Ngati Apa – It was recommended that if the Committee chose to include the proposed definition clarifications, that this submission be accepted in part as Te Runanga O Ngati Apa supported the Plan change as notified.

Submission 37.3: Horizons Regional Council – This submission should be accepted in part if the Committee chose to accept the minor modification suggested. Horizons Regional Council's submission had supported the plan change subject to clarification that the flood hazard provisions still applied and this had been confirmed. Mr Aim had met with Horizons Regional Council to clarify this matter.

Submission 37.4: Kevin and Carol Battersby – Ms O'Shaughnessy explained this submission was not about papakainga. The submitters lived on a very narrow roadway and were concerned that potential development of ancestral land would mean more people using an already inadequate roadway. Mr Aim had met with the submitters and explained that this was not the forum to resolve their issue.

Submission 37.5: NZ Fire Service Commission – The NZ Fire Service Commission (NZFSC) was seeking assurance that the provisions in the plan would continue to apply and this had been confirmed.

Evidence was tabled to support the NZ Fire Service Commission submission. The evidence noted that the officer's report was correct in its summary of the submission, as set out on page 9 of the report. The additional information was noted.

In reply to Mr Taylor's question of clarification, the Reporting Officer agreed that with respect to the fire requirements or performance standards, what was decided at the Rural Plan Change hearing would apply for all.

Chair's comment

Cr McDouall acknowledged the three members of the public in attendance. He said whilst it was beyond the submission process and what was said could not be considered in the Committee's deliberations, he would like to provide the opportunity for them to introduce themselves and address the Committee.

Erana Ashford-Mohi thanked the Chair for the opportunity given to address the Committee. In attendance with her was her uncle, Tawhitopou Patea. Reo Hau from the Maori Land Court was also in attendance to hear the Committee's discussion. Mr

Hau said he had undertaken some work on the development of this policy and was here hopefully to see it finalised and implemented.

Ms Ashford-Mohi had not submitted to the Plan Change as she had received the information too late. She lived in Palmerston North and was one of the first preparing to migrate back to her own papakainga – Otoko Pa.

Tawhitopou Patea addressed the Committee. He was here in support of his niece and thanked the Committee for the opportunity to speak.

Cr McDouall thanked Ms Ashford-Mohi for her attendance at this hearing. He said the Council's efforts to expand papakainga were reflected in Moari Bailey's submission. The Reporting Officer explained that a strategy group had been set up with representatives from Tupoho and Tamaūpoko who reported back to their various groups to evolve these provisions.

Committee member Jenny Tamakehu greeted Tawhitopou Patea, rangatira from Otoko and her cousin Erana Ashford-Mohi and said the Committee was humbled with their presence. She explained that for both her and Jill Sheehy, this was the first time their lwi had been represented on a hearings panel. Ms Tamakehu said papakainga consultation had been through runanga many times and many hui had been held. Discussions had been held with Ngati Apa, Nga Rauru and the Maori Land Court. The most important thing was for people to be in touch with hapu delegates, and keep in touch through email with the runanga to be better informed. Ms Tamakehu said it was a sensitive subject for all Maori and the hearing today was mainly about the future development of papakainga as some people wanted to create new papakainga on ancestral land. It was about people and the Council understanding all the definitions of papakainga and all were trying their best to try and find common ground.

In reply to Cr Craig's questions, the Reporting Officer said there was presently nothing in the District Plan that enabled what this Plan change proposed. Marae were currently judged in the same way as building a house on general land. There was no recognition of the different relationship to the land or the community component of some of the activities. This Plan change recognises the relationship of Maori to their ancestral land and relationships between people living or using the land. Going forward if there was to be a housing development within the papakainga whilst an assessment would include health and safety, structurally sound buildings, healthy water and wastewater systems, it would not be about amenity effects within the ancestral land. Provisions around amenity could be determined within the site, with effects contained within the ancestral land and no impact on any adjoining general title landowner.

Cr Craig queried how this would differ if someone wanted to build a retirement village with housing closer than normally seen and often parking allocated in different places. Camping grounds also were often different than was seen in a normal living situation. There was also a trend for people to live naturally in communal housing. Cr Craig said whilst she realised this was very much acknowledging ancestral rights and a way of doing things that were very special to a certain segment of the community, she wanted to put into context how other parts of the community were handled.

In response the Reporting Officer said ancestral land could occur in any zone and papakainga could occur on that land regardless of the zone. An example was the area zoned industrial at Marangai. Clusters of land use and amenity considerations were what zoning was about. A camp ground was not permitted in every area of the District and this was the same for retirement villages. In terms of a retirement village within a residential zone there would be rules that prescribed density requirements. Something

similar occurring on ancestral land would now be less constrained. It created some subtle freedoms and was an acknowledgement of the relationship of the land to the people than about the freedom created. It was more about the Council positively acknowledging that ancestral relationship to the land.

There was further general discussion on Papakainga with questions of clarification. The Reporting Officer said essentially anything that may happen within the ancestral land site could probably occur anyway. There might be more intensity or configuration of development may be slightly altered. The rules were designed however, that beyond the site the effects were exactly the same. Whether social housing, community buildings or a commercial entity, those were still things that would be capable of occurring on that land anyway and the effects of them would still be measured so that beyond the site those effects were minor. With reference to increased traffic on a narrow rural road, the Reporting Officer said if the density of development triggered a rule in the Plan that the road needed to be widened then that was an external effect and would be managed in exactly the same way. There was no leniency on external effects.

In response to Jenny Tamakehu's question, the Reporting Officer said papakainga was not required to be legally recognised through the Maori Land Court to enable the District Plan to treat it as papakainga.

In response to a further query regarding the submitters' concern on the effect on their property through a possible increase in traffic on a narrow rural road, the Reporting Officer said the first part of the submission had requested that the Council's normal processes be followed and to an extent that was exactly the case.

Due to their role in the consultation process, Jenny Tamakehu sought clarification that neither she nor Jill Sheehy had a conflict of interest in the Committee's deliberations. The Chair noted that engagement in consultation had been wide with many people involved and there were no submissions received that directly caused any conflict.

Cr McDouall considered the key definition of papakainga was the second part of the definition "... use by its members which promotes Tangata Whenua community development and sustains the relationship of Tangata Whenua with their culture, traditions and ancestral land."

It was agreed that submission 37.1 from Moari Maraea Bailey be accepted in part, with the adoption of the plan change as notified, with the addition to 2.4 of "Development of papakainga* will bring benefits to the people, the land, the community and the economy", and including the expanded definition for outer boundary and site boundary as accepted by the Committee.

Speaking to the motion, Cr McDouall said he thought recognising a key relationship between tangata whenua and ancestral land, particularly papakainga, was very progressive. This was an advance that was probably notably lacking when the District Plan was first struck and he was proud to be supportive of it.

Cr McDouall said he was particularly impressed with the submission received from Moari Bailey which for him fleshed out the Wairuatanga attached to papakainga land. While there would always be some element of nimbyism with whatever development was going to occur it was great to have something here that looked specifically at Iwi, Hapu and Whanau community development.

8.0 MAIN FINDINGS ON PRINCIPAL ISSUES

The Committee considered each submission and confirmed a decision for each. Refer to Appendix 1 for the decisions on submissions.

The Committee agreed:

That an “outer boundary” definition for papakainga be added

That the existing definition of a “site” have an addition specific to papakainga.

9.0 Section 32 REPORT EVALUATION

- 9.1 The S.32 report has been updated to include an evaluation of the amendments to the Plan resulting from Council’s Decision on Submissions. These changes as recorded in the report attached as Appendix 3.

10.0 STATEMENT OF DECISIONS AND REASONS

- 10.1 Refer to Appendix 1 to this report for the Council’s decision and reasons relating to each submission. Refer to Appendix 2 for the complete version of the Plan change text.

11.0 Appendices:

- 1: Decisions on Submissions and Reasons for Decisions
- 2: Marked- Up Version of Plan Change 37 following Decisions on Submissions
- 3: Section 32 Evaluation

Signature of Chairman



Councillor Hamish McDouall

15 January 2015