

**IN THE MATTER OF**

**The Resource Management Act 1991**

**And**

**IN THE MATTER OF**

**Plan Change 46 to the Whanganui District Plan publicly notified pursuant to clause 5 of the First Schedule of the Act.**

**MEMORANDUM FROM THE PANEL**  
**HEARING ADJOURNMENT AND REQUEST FOR FURTHER REFINEMENT OF DRAFT PLAN CHANGE PROVISIONS**

## **1 Introduction**

- 1.1 The hearing of submissions on proposed Plan Change 46 (**PC46**) was held on Monday 11 December 2017. All submitters who asked to be heard attended on that day and presented evidence in support of their submissions. The Whanganui District Council (**WDC**) reporting officer and advisers also presented their statements of evidence and responded to issues raised by submitters and questions put to them by the Panel during the hearing. The reporting officer (Mrs Brenda O'Shaughnessy) completed her reply the following morning. The hearing was adjourned at 9.15 am on Tuesday 12 December 2017, following the conclusion of the reporting officer's reply, to allow the Panel to deliberate on the contents of PC46 and the evidence received.
- 1.2 Having considered all of the PC46 material and the written and spoken evidence presented at the hearing, the Panel has concluded that further work is required to properly respond to the issues raised by submitters. The purpose of this memorandum is to set out the matters the Panel considers need further refinement together with a process and time frame for achieving the refinements.

## **2 Further Work**

- 2.1 The Panel has based its deliberations on the 'marked up plan text and maps' provided by Mrs O'Shaughnessy included as Appendix 4 of her section 42A report (the version referred to as '**PC46(R1)**'). The amendments presented in PC46(R1) were recommended by Mrs O'Shaughnessy. With the exception of PowerCo, no submitter proposed any alternative wording to PC46(R1). Mrs O'Shaughnessy agreed that the minor amendment suggested in a tabled letter<sup>1</sup> from PowerCo was appropriate.

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<sup>1</sup> Letter dated 11 December 2017 attaching a statement to the Hearing Panel

Representatives of the Collective Iwi<sup>2</sup> indicated clearly that the suggested amendments proposed by Mrs O'Shaughnessy do not resolve all of the concerns they hold about PC46. In her reply, Mrs O'Shaughnessy agreed that there is scope for further improvement in the wording and content of PC46 to better address the concerns raised by the Collective Iwi.

- 2.2 We acknowledge Mrs O'Shaughnessy's genuine endeavours to amend the PC46 text to respond to issues raised in submissions. As these issues were further explained by submitters at the hearing, it became apparent that there needs to be an opportunity for further discussion about the content of PC46 and the specifics of the submitters' concerns. We have identified some aspects of the PC46(R1) provisions that would benefit from further refinement. We set out below some questions about those aspects. We also, in section 3 of this memorandum, set out a process and time frame for responding to our questions.

### **Heritage Alert Overlay**

- 2.3 There was support from some submitters for the concept of a Heritage Alert Overlay for the PC46 area. However, it was not clear to submitters exactly what the purpose or the effect of the Heritage Overlay will be. We also observe some ambiguity in the description of the proposed Heritage Alert Overlay and in the policies and rules that accompany it. The proposed text for the introduction in Chapter 9 includes the following statement:

*'... The Heritage Alert Overlay will raise awareness for landowners and the community about the historic heritage of the wider Otamatea area.'*

- 2.4 It is not clear exactly how the Heritage Alert Overlay will raise awareness of the historic heritage of the wider Otamatea area or, even, of the area of the Structure Plan itself.
- 2.5 While the proposed PC46(R1) policy framework makes reference to cultural values and cultural impact assessment, the focus of the proposed rule framework is on *archaeological items*.
- 2.6 The RMA definition of 'historic heritage' is much wider than archaeological sites and, importantly, includes cultural values and sites of significance to Māori as well as the surroundings associated with those sites:

***'historic heritage—***

*(a) means those natural and physical resources that contribute to an understanding and appreciation of New Zealand's history and cultures, deriving from any of the following qualities:*

*(i) archaeological:*

*(ii) architectural:*

*(iii) cultural:*

*(iv) historic:*

*(v) scientific:*

*(vi) technological; and*

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<sup>2</sup> The Whanganui Land Settlement Negotiations Trust, Te Kaahui o Rauru, Te Ruunanga o Tuupoho presented a joint statement of evidence to the hearing in support of their individual submissions and identified themselves, for this purpose, as the 'Collective Iwi'. The joint initiative was helpful for the efficiency of the hearing and the Panel records its appreciation for the approach taken. Importantly, the joint statement does not override the content or standing of the individual submitters' submissions.

- (b) includes—
  - (i) historic sites, structures, places, and areas; and
  - (ii) archaeological sites; and
  - (iii) sites of significance to Māori, including wāhi tapu; and
  - (iv) surroundings associated with the natural and physical resources'

- 2.7 The text of PC46 (R1) correctly references 'historic heritage'. Whilst that is the technically correct expression under the RMA, and the expression *includes* cultural heritage, it doesn't perhaps express the full breadth of values held by Māori for this particular part of the Whanganui district. The values that Whanganui Māori hold for the area affected by PC46 were helpfully described in the *Interim Cultural Values Report*<sup>3</sup> and in the written and spoken evidence to the hearing on behalf of the Collective Iwi. We heard the wider area is the last remaining strong connection to tuupuna. We also heard that there will be waahi tuupuna and waahi tapu throughout the area of the proposed Structure Plan. Iwi also strongly value the water within wetlands and surface and groundwater bodies in and around the Structure Plan area. As we heard it, these taonga are important in their own right but it is also the surroundings associated with these that hold great cultural value. These are expressions of cultural heritage. The evidence was helpful in clarifying that cultural heritage is something more than just archaeological sites.
- 2.8 In this respect, the focus of the PC46(R1) rules on archaeological sites and archaeological assessment doesn't fully address the cultural heritage values of this area. The proposed rules for the Heritage Alert Overlay use the archaeological authority process administered by Heritage New Zealand as a trigger for consent status. This approach appears to devolve to a third party the task of determining the RMA process to be followed by WDC and would do so on the basis of a potentially narrow criterion (solely archaeological value). This has the potential to reduce the broader scope of cultural heritage values to a discussion about the presence or absence of archaeological sites. The evidence we heard suggests that this would be an undesirable outcome. Also, the proposed rules place reliance on the opinion of a 'suitably qualified archaeologist'. It may be that an archaeologist may not always be well qualified to draw conclusions about impacts on *cultural* heritage.
- 2.9 The Panel's preliminary conclusion is that it will be possible to further refine the PC46(R1) provisions to address these matters. To this end, the Panel seeks advice from the WDC reporting officer and submitters in relation to the following questions:
- (a) What amendments could be made to the description of values proposed for Chapter 9 to more fully describe the *cultural* heritage values as described in evidence?
  - (b) What amendments could be made to the provisions to better articulate the nature of the relationship of the Collective Iwi, and their culture and traditions, with their ancestral lands, water, sites, waahi tapu, and other taonga within the PC46 area?
  - (c) How could the objectives, policies and methods outlined in the Ngaa Rauru Kiiitahi '*Puutaiao Management Plan*' be incorporated into the PC46 text?
  - (d) Are there any other resource management planning documents held by any of the Iwi submitters that could be drawn on to assist in developing the PC46 policy framework?

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<sup>3</sup> Prepared by Raukura Waitai and Te Kaahui o Rauru for the Whanganui District Council

- (e) Acknowledging that an Interim Cultural Values Assessment has been completed for the area of the proposed Structure Plan, would there be merit in requiring additional cultural impact assessments to be undertaken to accompany applications for subdivision consent and other types of development within the proposed Structure Plan area?
- (f) Are there alternative approaches to individual cultural impact assessments that might more meaningfully address cultural heritage values? For example, might it be possible to establish a framework of policies or assessment criteria for assessing proposals that specifically addresses cultural heritage values? Might that reasonably sit within or alongside proposed Policy 4.3.10? For example, could such a framework include criteria or requirements specifying:
  - The protocols to apply in circumstances where waahi tapu or waahi tuupuna are found or are anticipated to be present within a development site?
  - Situations where an archaeological assessment is to be undertaken?
  - Particular requirements for earthworks activities?
  - How references to cultural values could be incorporated into the design of public or open spaces or the landscape treatment of roads and open spaces?
  - The inclusion of references to tuupuna in street naming?
  - Particular cultural considerations in the design of stormwater management facilities?
- (g) What are the permitted activities of the current zoning for the Structure Plan area and what aspects of those have the potential to conflict with cultural heritage values?
- (h) What provisions could be included in the PC46 policy and rule framework to address these potential adverse effects on cultural heritage values in future land development?
- (i) What opportunities are there for acknowledging or using the assessment skills of a Kaumatua who is appropriately qualified in cultural matters, on an equivalent basis to an ‘appropriately qualified archaeologist’?

### **Structure Plan (Appendix L) Road 3**

- 2.10 The proposed Structure Plan shows two cul-de-sacs extending perpendicular from proposed Road 3 (Appendix L). The officers’ intention is that that these roads will provide future access to land at 173-175 Great North Road without relying on new vehicle access direct from SH3. Mr Lillington, who owns land and lives at number 173 Great North Road, told us in evidence that these two cul-de-sacs are impractical. According to Mr Lillington, the proposed roads would conflict with designs he has for the subdivision and development of his land. Mr Lillington read aloud to the hearing a statement from his neighbours (Mr and Mrs Underwood) confirming that they have no intention of developing their land. We also note the submission of Mr Barry Hodson who owns land at number 181 Great North Road. Mr Hodson commented in his submission on the merits of the proposed Road 3 alignment. The Structure Plan’s purpose is to guide subdivision and development over a long period, possibly beyond the tenure of the current owners. It is important that an efficient and resilient road network is planned for that long period. However, the Panel wonders whether the

placement of two short roads as proposed, with the area of land they would occupy, is the most appropriate road network layout for the land in this part of the Structure Plan.

- 2.11 We request that the Council officers, in discussion with the landowners, confirm whether the cul-de-sacs shown on Appendix L or some alternative arrangement will provide the most appropriate future road layout.

### 3 Next Steps

- 3.1 The Panel proposes the following process to address the matters discussed in this memorandum and to respond to the questions we have posed. We have suggested to the Council that the following process, and particularly Step 2, would benefit from facilitation by an independent facilitator. We understand that the Council agrees with our suggestion and will seek to appoint a suitable facilitator.

**Step 1:** WDC officers are to circulate this memorandum to all submitters (preferably by email) and draw to submitters' attention the time frame within which we suggest the following steps should be completed. We have highlighted our suggested time frame in yellow below. If any submitters have any difficulty with the time frame proposed, they should advise the Council of their difficulty as early as practicable after receiving this memorandum, preferably to Mrs Leayne Huirua at the email address given below. Mrs Huirua will forward those to the Panel for consideration.

**Step 2:** WDC officers are to meet with submitters whose submissions raise the issues set out in section 2 of this memorandum or whose land will be affected by any amendments made to respond to those issues. The purpose of the meeting(s) is to discuss the specific amendments that could be made to address the concerns raised. To be clear, our view is that invitation to these meetings should be extended to the individual members of the Collective Iwi, Mr Keryn Amon, Mr & Mrs Lillington, Mr & Mrs Underwood and all other owners of undeveloped vacant land within the Structure Plan. The issues we raise have relevance for future land development, rather than for existing developed and occupied residential properties within the Structure Plan area.

**The meeting(s) should be held no later than 15 February 2018.**

**Step 3:** WDC officers are to draft amendments to give effect to any agreements or suggestions made in meeting(s) held with submitters.

**Step 4:** WDC officers are to circulate the draft amendments to all submitters (not just those who may attend the Step 2 meeting(s)), **within four weeks of the meeting(s) held in Step 2.**

**Step 5:** Submitters are to provide their written comments on the draft amendments to WDC officers **no later than six weeks after the date of circulation of the draft amendments generated under Step 4.** Where submitters do not support the draft amendments, they are to provide a brief statement explaining their reasons for non-support and are invited to propose alternative wording (provided any alternative addresses matters within the scope of the submission(s) made by that submitter). The Panel has limited scope to propose its own wording. Our task will be to assess the merits of amendments proposed by WDC officers and by submitters. In the absence of any alternatives received from submitters, the Panel's deliberations will necessarily focus on any amendments proposed by WDC officers.

**Step 6:** WDC officers are to compile the comments received from submitters and may add any further refinements to the circulated amendments to respond to any comments received. The compiled amendments and comments are to be reported to the Panel and copied to all submitters **within four weeks of the due date for submitters' comments specified under Step 5 above.**

**Step 7:** The Panel will determine its recommendation based on the PC46 material circulated to date, the evidence to the hearing and any further information generated by Steps 1 to 6 above. The Panel will reconvene if necessary to consider the material received, depending on the comments received at Step 6.

- 3.2 The Panel appreciates that the time necessary to complete Steps 1 to 7 is longer than the Council had envisaged for this plan change process. However, in response to our questions during the officers' reply, Mrs O'Shaughnessy and Mr Hamish Lampp (WDC's Principal Planner) agreed that it is appropriate to provide an opportunity to explore in greater detail provisions that could address the concerns of submitters. Mrs O'Shaughnessy and Mr Lampp also accepted that additional time will be required. Having said that, our hope is that all parties will make the necessary people available to participate constructively and in a timely manner in the process we have outlined above.
- 3.3 Ultimately, the Panel will form a recommendation to the Council based on the information we receive. If the process outlined above is able to generate broad agreement about a refined set of PC46 provisions, that will greatly assist our task.
- 3.4 Any questions about this memorandum or the process we propose should be directed to Mrs Leayne Huirua at Whanganui District Council (email: [Leayne.Huirua@whanganui.govt.nz](mailto:Leayne.Huirua@whanganui.govt.nz)). Mrs Huirua will confer with the Panel as necessary.



Signed by Christine Foster (Chair)  
on behalf of the Hearing Panel

15 December 2017