

**RESOURCE MANAGEMENT ACT 1991**

**PROPOSED HOROWHENUA DISTRICT PLAN**

**HEARING OF SUBMISSIONS**

**DECISION OF HEARING PANEL**

**TOPIC:** Report on District Plan  
Matters of Importance to Tangata Whenua

**HEARING PANEL:** Robert Nixon (Chair)  
Cr Tony Rush  
Cr Garry Good

**HEARING DATE:** 8<sup>th</sup> & 12<sup>th</sup> April and 28<sup>th</sup> May 2013

## CONTENTS

1.0	INTRODUCTION .....	3
2.0	OFFICER'S REPORT .....	3
3.0	SUBMITTER APPEARANCES .....	4
4.0	EVALUATION.....	4
4.1	Chapter 1 Introduction .....	5
4.2	Objective 1.1.1.....	10
4.3	Policies 1.1.2 – 1.1.7.....	11
4.4	Explanation & Principal Reasons (Objective 1.1.1) .....	12
4.5	Methods for Issue 1.1 & Objective 1.1.1 .....	17
4.6	Methods for Issue 1.2 & Objective 1.2.1 .....	18
4.7	Methods for Issue 1.3 & Objective 1.3.1 .....	18
4.8	Anticipated Environmental Result 1(g) .....	19
4.9	General Matters .....	19
4.10	Rules 16.6.21(a) and 19.6.13(a) – Sites of Significance to Tangata Whenua.....	20
5.0	SECTION 32.....	22
6.0	DECISION .....	23
	APPENDIX A: Proposed Plan as amended by Hearing Decisions .....	24
	APPENDIX B: Schedule of Decisions on Submission Points .....	30

## 1.0 INTRODUCTION

- 1.1 We were appointed by the Horowhenua District Council to consider submissions on the Proposed District Plan relating to Matters of Importance to Tangata Whenua.
- 1.2 A hearing into the submissions was held on 8 April 2013. Ms Vivienne Taueki of the Muaupoko Co-operative Society presented evidence on 12 April. Following discussions between the officers and Mr Philip Taueki, a further hearing (at which all Hearings Commissioners were present) was held on 28 May, at which Mr Taueki presented evidence, supported by other witnesses as listed below.
- 1.3 The hearing was closed on the 13 September 2013.

### Abbreviations

- 1.4 In preparing this decision we have used the following abbreviations:

DoC	Department of Conservation
District Plan	Proposed Horowhenua District Plan
NZHPT	New Zealand Historic Places Trust
Officer's report	Report evaluating the applications prepared by Mr McCorkindale for our assistance under s42A(1) of the RMA
One Plan	Proposed Horizons Regional Council One Plan
The Act	Resource Management Act
MTA	Tribal Authority

## 2.0 OFFICER'S REPORT

- 2.1 We were provided with and reviewed the officer report prepared by David McCorkindale pursuant to s42A of the Act prior to the hearing commencing.
- 2.2 The officers report noted that the majority of submissions received were from three submitters who shared a very similar view on most matters addressed in the report. These concerns related to the Council's approach to consultation in particular the status of the Muaupoko Tribal Authority (MTA). They were concerned that Maori who did not accept that the MTA spoke for Muaupoko would not be consulted on matters relating to resource management. We were advised that these submitters had not been involved in the Iwi Advisory Group (which also involved three other iwi) that was formed to provide input and direction on the drafting of Chapter 1. It was their view that consultation should be undertaken between the Council and Tangata Whenua and not with mandated iwi authorities.
- 2.3 For its part, we understood from the officer's report that the Council felt it was caught in the crossfire between two acrimonious groups within Muaupoko, and that it had acted in good faith by consulting with the MTA which was recognised as representing Muaupoko by Te Puni Kokiri. The changes proposed to the text of the District Plan through the officers report

were of a generally minor nature, recommending that the approach undertaken as part of the consultation process be endorsed, including consulting with iwi authorities, and recognising that interim measures remain in place to provide a level of protection to cultural sites of importance to Iwi until such time that specific sites were identified included in the district plan (through what would be a subsequent plan change process).

2.4 Although most submissions were on Chapter 1, which is the subject of this hearing and decision, similar submissions by the same submitters had risen across a number of different chapters and who were heard by a number of hearings panels. Accordingly, officers contacted Mr Philip Taueki, who agreed to a separate hearing with himself and a group of supporters, which took place on 28 May 2013, before all Hearings Commissioner's involved in the district plan hearings process.

2.5 A separate submission by the Homestead Group, on a subject also touched upon indirectly in a submission by the NZHPT, concerned the potential lack of certainty relating to the location of cultural sites and their effect on investment decisions, and the potential difficulties associated with silent files.

### **3.0 SUBMITTER APPEARANCES**

3.1 The following submitters made appearances at the hearing:

- Dr Huhana Smith (Te Taiao Raukawa)
- Mr Charles Rudd
- Mr Bryce Holmes
- Ms Vivienne Taueki (heard separately 12 April 2013)
- Mr Philip Taueki (heard 28 May 2013). The following parties also appeared with Mr Taueki at that time;
- Anne Hunt
- Vivienne Taueki
- Daphney Luke
- Professor Whitianga Winiata
- Brian Ten Have
- Simon O'Neill

### **4.0 EVALUATION**

A large part of the evaluation undertaken in these decisions concerns submissions from Mr Philip Taueki, the Muaupoko Co-operative Society and Mr Charles Rudd. Some of the matters raised by these submitters are also covered in other decisions relating to different topic areas. However of particular significance in these decisions are the provisions of Chapter 1 entitled "Matters of Importance to Tangata Whenua". A major part of this is the extent to which the Muaupoko Tribal

Authority (MTA) has been identified as a partner by the Horowhenua District Council for the purposes of consultation, and how this may affect consultation with other Tangata Whenua who considered themselves outside the ambit of this organisation. These matters are addressed in Parts 4.1, 4.4 and 4.5 of these decisions.

## 4.1 Chapter 1 Introduction

### *Submissions Received*

<b>Sub No.</b>	<b>Submitter Name</b>	<b>Decision Requested</b>	<b>Further Submission</b>
11.01	Philip Taueki	Delete the proposed Muaupoko statement and replace with a statement that is historically and culturally authentic.	519.00 Charles Rudd(Snr) - Support
60.02	Muaupoko Co-operative Society	No specific relief requested.  Inferred: That the inaccurate statements within Chapter 1 be deleted.	
67.01	Taiao Raukawa Environmental Resource Unit	Amend the Statement of Ngāti Raukawa as follows:  Paragraph 1: Amend to read as “Ngāti Raukawa and affiliates (like Kauwhata ( <u>Feilding</u> ), Tukorehe (Kuku)...”  Paragraph 1: Include a new sentence at the end of Paragraph 1 as follows: <u>The legacies set down by ancestral Māori land tenure activities during Te Rauparaha and his allies' time for Ngāti Raukawa and affiliates, continue to this day.</u>  Paragraph 5: Include new bullet point to list (as first bullet point) as follows: <u>Tuku Whenua - Gifting land; ...</u>  Paragraph 6: Amend third sentence as follows: Embedded cultural markers, whether urupā, burial grounds, cemeteries; <u>wāhi tapu</u> , pā sites, former papa kainga; <u>wāhi tūpuna</u> ...  Paragraph 6: Include new bullet point list of marae after second sentence as follows (listed from north to south): <u>Te Au, Himatangi;</u> <u>Paranui, Himatangi;</u> <u>Motuiti, Himatangi;</u> <u>Whakawehi, Shannon;</u> <u>Kereru, Kōptāraoa;</u> <u>Matau, Kōptāraoa;</u>	

<b>Sub No.</b>	<b>Submitter Name</b>	<b>Decision Requested</b>	<b>Further Submission</b>
		<u>Huia, Poroutawhao;</u> <u>Ngātokowaru; Hōkio</u> <u>Kikopiri, Muhunoa;</u> <u>Tukorehe, Kuku;</u> <u>Wehiwehi, Manakau...</u>	
67.02	Taiao Raukawa Environmental Resource Unit	Amend Chapter 1 Introduction to Include a new heading above paragraph 3 on page 1-6 (below dissecting line) to read as follows <u>'Statutory Duties and Responsibilities under the RMA'</u>	
67.10	Taiao Raukawa Environmental Resource Unit	<p>Amend the Statement of Ngāti Raukawa to include the following text after paragraph 6:</p> <p><u>...natural systems in Horowhenua. In particular, Council needs to note that customary interests in certain areas such as Omarupapako, Round Bush Reserve will be referred back to Crown for further consideration, and if need be, for amendment of the Ngāti Apa legislation. The Ngāti Raukawa Treaty Claims team flag with Council that the Ngāti Apa claim will be challenged before the Waitangi Tribunal. Council need note too that Ngāti Raukawa and affiliates are determining their customary interests and mana tuku iho, exercised by iwi, hapū and whanau as tangata whenua to certain areas of the marine and coastal region of Horowhenua. Whanau, hapū or iwi groups have until March 2017 to seek customary marine title or claims to the common marine and coastal area. This can be done through specific negotiations with the Crown or through an application to the High Court.</u></p>	
109.02	Charles Rudd (Snr)	<p>Amend Chapter 1 Introduction as follows:</p> <p><u>Muaupoko</u></p> <p><u>Ngati Apa</u></p> <p><u>Ngati Raukawa</u></p> <p><u>Rangitane</u></p> <p><u>Muaupoko</u></p>	

<b>Sub No.</b>	<b>Submitter Name</b>	<b>Decision Requested</b>	<b>Further Submission</b>
		<u>Rangitane</u> <u>Ngati Apa</u> <u>Ngati Raukawa ki te Tonga</u>	
109.03	Charles Rudd (Snr)	<p>Muaupoko have many traditional hapu. Those currently active are: <del>Ngati Pariri, Ngati Hine, Ngati Tamarangi, Ngati Whanokirangi, Ngati Te Ao, Te Ngarue and Punahau.</del></p> <p><u>Ngai te Ngarue</u></p> <p><u>Ngai te Ao</u></p> <p><u>Ngati Tamarangi</u></p> <p><u>Ngati Hine</u></p> <p><u>Ngati Pariri</u></p> <p><u>Ngati Whanokirangi</u></p> <p><u>Punahau</u></p>	
109.05	Charles Rudd (Snr)	<p>Delete the following:</p> <p><del>At the time of preparing the Proposed District Plan, the Muaupoko Tribal Authority Incorporated is the recognised Mandated Iwi Authority representing Muaupoko for the purposes of the RMA. The Muaupoko Tribal Authority encourages and invites consultation should people wish to know its views and obtain information regarding sites and areas of significance to Muaupoko.</del></p>	

A number of submission points have been made in relation to the introductory text of Chapter 1. One of the most contentious issues is that of the status of the Muaupoko Tribal Authority (MTA) which has been challenged by a number of submitters, notably Mr P.Taueki, the Muaupoko Co-operative Society and Mr C. Rudd. This rather fundamental issue is also discussed in detail under Part 4.4 of this decision, also taking into account evidence presented to the combined hearing session held on 28 May by Mr Philip Taueki and others.

The submission points on the "Introduction" range from minor wording amendments, to submissions challenging the accuracy or validity of the statements that have been supplied by each Iwi.

**P.Taueki and the Muaupoko Co-operative Society** oppose the 'Statement of Muaupoko' which is included within the Introduction of Chapter 1 on the basis that it is not a valid account.

Part B, Objectives/Policies of the District Plan describes the Tangata Whenua of the Horowhenua District, and contains four statements. These statements are introduced by a sentence stating "the following statements have been prepared by representatives from the iwi authority for each iwi". This is followed by a "Statement of Muaupoko", "Statement of Ngati Apa", "Statement of Ngati Raukawa" and "Statement of Rangitane".

Mr Taueki seeks that the statement of Muaupoko be replaced with a statement that is historically and culturally authentic. The officer's report stated that the Statement of Muaupoko was prepared by the MTA and (subject to minor typing or formatting amendments) was included in the Proposed Plan unabridged.

As noted by the reporting officer, the submitters have not offered an alternative wording for the statement as a whole, but have made specific comment with respect to the description of the status of Lake Horowhenua and Hokio Stream as discussed below. Notwithstanding the issue of whether the MTA has authority to speak for Muaupoko, any submitter has the right to have alternative wording considered on its merits. However in the absence of an alternative "Statement" being put forward, the Hearings Panel is placed in a difficult position.

That part of the Statement of Muaupoko which is specifically opposed by Mr Taueki and the Muaupoko Co-operative Society is the final paragraph which states:

*"Please note that the Punahau (Horowhenua) Lake Bed and Hokio Stream including specific land adjacent to them are owned by the Lake Horowhenua Trust. This lake is also a Muaupoko Fisheries Reserve and there are prohibitions associated with fishing in these areas. Muaupoko Tribal Authority encourages consultation with this trust should people wish to know their views".*

The submitters state that it is wrong to claim that Punahau (Horowhenua) Lake bed and Hokio Stream including specific land adjacent to them are owned by the Lake Horowhenua Trust. They drew attention to the wording contained in the provisions of Section 18 (2) of the Reserves and Other Lands Disposal Act 1956. The reporting officer suggested that the purposes of clarity that the wording be amended as follows: *"Please note the Punahau (Horowhenua) Lake Bed and Hokio Stream including specific land adjacent to them have been vested with the ~~are owned by the~~ Lake Horowhenua Trust on behalf of the Maori owners, that it the Muaupoko Iwi".*

Section 18 of the 1956 Act is quite lengthy, and caution is required in taking a selective extract from it. However, the Hearings Panel considered that the most appropriate course of action is to replace the final paragraph of the Muaupoko Statement and incorporate the relevant provisions of section 18, subclauses (2) and (3) of the 1956 Act which reads as follows:

*"(2) Notwithstanding anything to the contrary in any Act or rule of law, the bed of the lake, the islands therein, the dewatered area, and the strip of land 1 chain in width around the original margin of the lake (as more particularly secondly described in subsection (13)) are hereby declared to be and have always been owned by the Maori owners, and the said lake, islands, dewatered area, and strip of land are hereby vested in the trustees appointed by Order of the Maori Land Court dated 8 August 1951 in trust for the said Maori owners.*

*(3) Notwithstanding anything to the contrary in any Act or rule of law, the bed of the Hokio Stream and the strip of land 1 chain in width along portion of the north bank of the said stream (being the land more particularly thirdly described in subsection (13)), excepting thereout such parts of the said bed of the stream as may have at any time been legally alienated or disposed of by the Maori owners or any of them, are hereby declared to be and have always been owned by the Maori owners, in the said bed of the stream and the said strip of land are hereby vested in the trustees appointed by Order of the Maori Land Court dated 8 August 1951 in trust for the said Maori owners".*

This change would make the wording consistent with the legislation and clarifies the status of the Maori land owners. On this basis, the Hearings Panel recommended that the submission points by



P.Taueki and the Muaupoko Co-operative Society be accepted in part. The text changes are set out in Appendix A.

**Mr Charles Rudd**, while partly supporting the text in the Introduction to Chapter 1, also sought an amendment to the "Statement of Muaupoko". He sought the deletion of the following paragraph;

*"At the time of preparing the Proposed District Plan, the Muaupoko Tribal Authority Incorporated is the recognised Mandated Iwi Authority representing Muaupoko for the purposes of the RMA. The Muaupoko Tribal Authority encourages and invites consultation should people wish to know its views and obtain information regarding sites and areas of significance to Muaupoko."*

This is a very contentious issue, raised not only in this submission but particularly in the submissions of Mr P.Taueki and the Muaupoko Co-operative Society. The reporting officer was of the view that the statement was both factually correct and helpful, on the basis that the MTA are recognised on the Government's website as representing the Muaupoko Iwi on RMA matters. (Te Kahui Mangai being the mechanism the Crown uses for fulfilling its statutory obligations under s35A(2) of the RMA). The extract from the "Muaupoko Statement" above is qualified by the words "*at the time of preparing the proposed District Plan .....*"

The statement in the District Plan is effectively "past tense" and describes what actually occurred at the time that the new District Plan was prepared. Consequently, there is only limited scope to change this description of the events that have already occurred as part of the preparation of the District Plan. A comprehensive discussion on this wider issue is contained in section 4.4 of this decision. The Hearings Panel recommended that Mr Rudd's submission point be accepted in part, so that the final paragraph under the "Statement of Muaupoko" be amended so that it reads as follows:

At the time of preparing this Proposed District Plan the Muaupoko Tribal Authority Incorporated was listed by Te Puni Kokiri under "Te Kotaha o nga Ropu Mangai Iwi/Maori" as an iwi authority ~~is the recognised Mandated Iwi Authority~~ representing Muaupoko for the purposes of the RMA. The Muaupoko Tribal Authority encourages and invites consultation should people wish to know its views and obtain information regarding sites and areas of cultural significance to Muaupoko.

On this basis, it was resolved that the submission point of Mr C. Rudd be accepted in part, with the text changes also incorporated into Appendix A.

**Taiao Raukawa Environment Resource Unit** represented by Dr Huhana Smith appeared at the hearing in support of amendments (essentially in the nature of refinements) proposed to the District Plan. The submitter sought some minor changes to the "Statement of Ngati Raukawa". We were advised that the original statement was actually prepared by Taiao Raukawa, and there were no further submissions opposing the amendments proposed by the submitter. Accordingly the Hearings Panel resolved that the suggested changes be adopted and that the submission point be accepted.

The Taiao Raukawa Environment Resource Unit also sought that a heading be added to Chapter 1 at the point where the chapter outlines the statutory duties and responsibilities under the RMA. The proposed heading would be "*Statutory Duties and Responsibilities under the RMA*". The Hearings Panel agreed with the reporting officer that the suggested amendment would be a helpful addition to the chapter, as it assists in understanding the following text. Accordingly, the

submission point was accepted, and that the proposed heading will be added to the Proposed Plan.

The Taiao Raukawa Environment Resource Unit opposed that part of the wording within the Statement by Ngati Apa that refers to Omarupapako. The submitter sought to amend the text to update the Statement of Ngati Raukawa to also include reference to Omarupapako/Round Bush Reserve. It was explained that the proposed additional wording would helpfully identify that Raukawa intended to pursue an interest in Omarupapako through the Waitangi Tribunal. The proposed changes do not impact on the wording of the Ngati Apa statement at this point. The Hearings Panel resolved that submission point 67.10 be accepted, and that the wording of the Proposed Plan be amended. The text changes sought by Taiao Raukawa Environment Resource Unit are set out in Appendix A.

Mr C.Rudd lodged two submission points concerning detailed matters within the 'Introduction'. Firstly, he sought that the *order* that the Iwi are listed in the Introduction to Chapter 1 be amended to reflect the 'correct order' as follows; Muaupoko, Rangitane, Ngati Apa and Ngati Raukawa ki te Tonga. Iwi are currently listed in alphabetical order (certainly not suggesting any element of precedence), and no reasons were given why this change in order was required. It was noted that the same issue arose in the hearings of submissions relating to the "Introduction" and "Cross Boundary Issues" chaired by Commissioner Dean Chrystal. In that decision Mr Rudd had lodged a similar submission (109.00) on the same point. It was resolved that the text of the introduction be changed slightly to make reference to the iwi being listed in alphabetical order. The Hearings Panel decided that as there was no compelling reason to change the order, that the submission point be rejected.

Mr C. Rudd also sought a revision to the order which active hapu for Muaupoko are listed within this chapter. Although no reason has been provided for the changed order, and the order itself may be of little significance in the context of the Plan, the Hearings Panel was prepared to accept a change in listed order, and submission point 109.03 was accepted.

## 4.2 Objective 1.1.1

### ***Submissions Received***

Sub No.	Submitter Name	Decision Requested	Further Submission
83.00	Ross & Margaret Hood	Amend and Include provisions in the Plan to provide for the following:  A policy of protection of all landowners' property rights must be the written policy of all future District Plans.	

The submission by R. and M. Hood supported Objective 1.1.1 in part, to the extent that the issues of costs and time are the same for all landowners, as well as Tangata Whenua.

The submitter is of the view that the Council has been eroding property rights, and does not attach sufficient importance to them. The submitter did not put forward amended text to address this deficiency. There is however a discipline imposed on Councils under section 32 of the RMA, and under section 85 of the RMA where an affected party can apply for a provision to be struck down on the basis that it denies reasonable use of land. However subject to these two provisions, there is no inherent right of compensation for provisions in plans that may restrict landowners "rights" to develop the land, or use natural and physical resources, in a manner that they see fit. Inevitably,

this involves a balancing exercise; the process of evaluating submissions on a Proposed Plan through this hearings process, or necessary through the Environment Court determines whether or not the appropriate balance has been struck.

The District Plan upon which these hearings are being undertaken, will be amended to a greater or lesser degree as a result of submissions that have been lodged upon it. There is potential for further amendments should any decisions on these submissions be challenged before the Environment Court. However the issue of the protection of private property rights as set out by the generic level contained in this submission is more of a philosophical issue, rather than one to be resolved through these hearings on the provisions on the District Plan. Rather, these hearings are aimed at resolving a balance between private property rights and regulatory intervention at a more specific level - that of particular objectives policies and rules - and whether the provisions of the District Plan as notified would best achieve the purpose of the Act.

No specific changes have been identified, or appear to be required, in response to this generic philosophical submission relating to private property rights. Accordingly the Hearings Panel resolved that this submission point be rejected.

### 4.3 Policies 1.1.2 – 1.1.7

#### Policy 1.1.2

Sub No.	Submitter Name	Decision Requested	Further Submission
11.02	Philip Taueki	No specific relief requested. Inferred: Retain Policy 1.1.2.	

#### Policy 1.1.3

Sub No.	Submitter Name	Decision Requested	Further Submission
11.33	Philip Taueki	No specific relief requested. Inferred: Retain Policy 1.1.3.	

#### Policy 1.1.4

Sub No.	Submitter Name	Decision Requested	Further Submission
11.34	Philip Taueki	No specific relief requested. Inferred: Retain Policy 1.1.4.	

#### Policy 1.1.5

Sub No.	Submitter Name	Decision Requested	Further Submission
11.35	Philip Taueki	No specific relief requested. Inferred: Retain Policy 1.1.5.	

#### Policy 1.1.6

Sub No.	Submitter Name	Decision Requested	Further Submission
11.36	Philip Taueki	No specific relief requested. Inferred: Retain Policy 1.1.6.	

## Policy 1.1.7

Sub No.	Submitter Name	Decision Requested	Further Submission
11.37	Philip Taueki	No specific relief requested. Inferred: Retain Policy 1.1.7	

P.Taueki supports Policies 1.1.2 - 1.1.7. The Hearings Panel accepted these submission points.

## 4.4 Explanation & Principal Reasons (Objective 1.1.1)

### *Submissions Received*

Sub No.	Submitter Name	Decision Requested	Further Submission
11.03	Philip Taueki	No specific relief requested. Inferred: Amend Explanation and Principal Reasons for Objective 1.1.1 to remove the commitment of Council to seek guidance of mandated Iwi Authorities.	519.01 Charles Rudd(Snr) - Support

Mr Taueki opposes in-part the text in the Explanation and Principal Reasons for Objective 1.1.1 and Policies 1.1.2 – 1.1.7 which are set out on pages 1-9 to 1-11 of Chapter 1. The submission point suggests that the final paragraph of this text undermines the objectives of these provisions (Objective 1.1.1 and Policies 1.1.2 – 1.1.7). It is also apparent from reading his full submission relating to Chapter 1, that he opposes reference to the term "Iwi authorities" throughout Chapter 1.

This final paragraph on Page 1 -11 of Chapter 1 reads as follows:

*"The RMA makes varying references to "Maori", "Tangata Whenua", and "Iwi Authorities and tribal Runanga". The Council recognises that, as individual resource management issues arise, it is important to have dialogue with the people who have the closest interest in the issue. This may be an Iwi Authority but may also be an individual Hapu. The Council will seek the guidance of the mandated Iwi authorities to understand the most appropriate point of contact for such a dialogue and also to identify any Iwi Management Plans recognised by Iwi Authorities and lodged with the Council".*

It is this issue which forms the heart of the concerns expressed in the submissions by Mr P. Taueki, the Muaupoko Co-operative Society, and Mr C. Rudd (refer to 4.1 above). Although the above submission point is only one particular aspect of the District Plan opposed by this group of submitters, it provides a suitable opportunity to address the concerns raised by this group as a whole, particularly with respect to with whom consultation should be undertaken.

Mr Taueki expanded on his submission at a special hearing session arranged on 28 May, supported by other parties and some additional written material. He has particular concerns relating to the management of Lake Horowhenua, but his concerns go wider than this.

Mr Taueki is a vociferous critic of the Council's relationship with the Muaupoko Tribal Authority (MTA). Unfortunately, the MTA elected not to be a party to these hearings either as a submitter in its own right, or in opposition to the submissions made by Mr Taueki and others. It has not taken the opportunity to provide evidence in support of its own position. The submission by Mr Taueki

and others appears to be on two levels, firstly that consultation doesn't have to be with iwi authorities, and secondly that the MTA is not an iwi authority. (The legislation also refers to customary marine title groups, but this was not a matter raised through the hearings).

Mr Taueki is particularly concerned that MTA is consulted by Council on all matters relating to Muaupoko, when in his view the contact persons within that organisation may not be directly affected by a particular proposal, or may not have any understanding of the issues that may directly affect members of the iwi, including as property owners. Mr Taueki drew the analogy whereby an activity might be proposed which affects a person's property rights, but that the ability of that person to comment on or consider the effects on them, was delegated to a third party (such as the MTA), which he argued was unfair.

The Taueki submission argues that Sections 6, 7 and 8 do not make any reference to "Iwi Authorities", but rather to Tangata Whenua. He states that the words "Tangata Whenua", "Maori" and "Tribal Authority" are not synonymous. He observed that there were no Iwi Authorities in 1840 at the time of the signing of the Treaty of Waitangi. He contends that in terms of consultation and monitoring, the local authority relationship should be with Tangata Whenua. He said that with respect to the contents of Chapter 1, the *"..... whole chapter is a breach of the RMA, and needs to be adjusted by removing all reference to iwi authorities on the grounds that sections 6, 7 and 8 of the RMA refer to Maori and their culture and traditions with their ancestral lands etc, kaitiakitanga and the Treaty of Waitangi - not Iwi authorities!"*

Mr Taueki tabled correspondence from Crown Law (Geoffrey Melvin, Crown Counsel) dated 11 October 2011. This letter states that *"the Muaupoko Tribal Authority is yet to go through the formal mandating process. To date, the Crown has not recognised the mandate of any Muaupoko entity for the purpose of negotiating a settlement of Muaupoko's historical Treaty of Waitangi claims"*. A similar comment was made in a tabled letter from the Office of the Hon. Christopher Finlayson, Minister for the Treaty of Waitangi negotiations, dated 31 October 2011. Both letters were addressed to Anne Hunt of the Potangotango Foundation, who appeared with Mr Taueki at the hearing on 28 May.

Our understanding of the Council's position is that the MTA is identified on the Te Puni Kokiri website as the Iwi Authority representing Muaupoko. It is perhaps unhelpful that the RMA refers to "Iwi Authorities" while Te Puni Kokiri refers to a "Mandated Iwi Organisation" (MIO). However the Council has referred to the term "Iwi Authority", which we consider is justified, as this is the term used in the RMA.

With respect to the document of Te Puni Kokiri entitled *"Te Kotaha o nga Ropu Mangai Iwi/Maori" (a Profile of Iwi and Maori Representative Organisations)* dated March 2011, the following statement appears on page 77;

*"Muaupoko Tribal Authority Incorporated*

*Established in 1997, the Muaupoko Tribal Authority Incorporated, chaired by Mahanga Williams, has commenced work towards obtaining a mandate to settle Muaupoko historical Treaty Claims. Although it is a recognised iwi under the Maori Fisheries Act 2004, Te Ohu Kaimoana has yet to confirm the Muaupoko Tribal Authority as an MIO"*.

This statement may have been overtaken by events. On the Te Kahui Mangai website in July 2013 the MTA is noted as being a mandated iwi organisation under the Maori Fisheries Act 2004, and represents Muaupoko as an "iwi authority" for the purposes of the Resource Management Act

1991. We understand that the MTA is currently working towards being to be recognised as an MIO for the purpose of Treaty negotiations.

How are Maori organisations referred to in other plans? We note that the Horizons "One Plan" which provides a regional framework for district plans in the region, refers to *nga hapu* and *nga iwi*.

The neighbouring Manawatu District Plan refers to consulting fully with "Tangata Whenua groups" and consistently uses the phrase "Tangata Whenua". Using a more distant example, the Selwyn District Plan also refers to "Tangata Whenua".

A further point we note is that there are *four* "iwi authorities" within Horowhenua District, of which Muaupoko is but one. None of these other iwi have elected to take part in, or respond to, the submissions of Mr Taueki and others on Chapter 1. Although the submissions of Mr Taueki, the Muaupoko Co-operative Society, and Mr Rudd appear primarily related to the Muaupoko, any amendments to the District Plan will have consequential implications for these other iwi, as the text refers to iwi within Horowhenua district as a whole.

While Mr Taueki's submission emphasises the contents of section 6 - 8 of the RMA, the most important provisions with respect to the Council's role in plan preparation are contained elsewhere in the Act. For completeness, the relevant provisions are set out below:

In section 3 of the Act, "iwi authority" is defined as meaning "*the authority which represents an iwi and which is recognised by an iwi as having authority to do so*".

In section 3 of the Act, "Tangata Whenua" is defined as meaning "*in relation to a particular area, means the iwi, or hapu, that holds mana whenua over that area*".

Under the "Matters of national importance" in section 6 (e) of the Act, (councils) are required to recognise and provide for "*the relationship of Maori and their culture and traditions with.....*"

Section 33 of the Act provides that a local authority may transfer any 1 or more of its functions or powers and duties under the Act to various parties which include (b) "*an iwi authority*".

Section 35A of the Act specifies the Council's duty to keep records about "*iwi and hapu*". The local authority is required to keep a record of the "*contact details of each iwi authority within the region or district and any groups within the region or district that represent hapu for the purposes of this Act .....*" (subsection (1)(a); planning documents represented by each *iwi authority* (subsection (1) (b), and any area of the region or district over which 1 or more iwi or hapu exercise kaitiakitanga (subsection (1) (c)).

Subsection 2 (a) requires that the Crown must provide each local authority information on *iwi authorities* within the region or district, and any groups that represent hapu.

Subsection 3 states that the local authority may keep a record of information relevant to its region or district on iwi, obtained directly from the relevant *iwi authority* or on *hapu*, obtained directly from the relevant group representing the hapu.

Section 74 of the Act is relevant to the preparation of district plans. Subsection (2A) states that a territorial authority "*when preparing or changing a district plan, must take into account any relevant planning document recognised by an iwi authority and lodged with the territorial authority, to the extent that its content has a bearing on the resource management issues of the district*".

(We note that no Iwi Management Plan for Mauapoko has been prepared to date).

The First Schedule to the Act sets out the procedures to the preparation of policy statements and plans. Clause 3(1)(d) states that the local authority shall consult "*the tangata whenua of the area who may be so affected, through iwi authorities;.....*"

It may also consult "*anyone else during the preparation of a proposed policy statement or plan*".

Finally, clause 3B specifically sets out the purpose of "*Consultation with iwi authorities*".

To the Hearings Panel, it is clear that with respect to the preparation of district plans (to which section 74 of the Act and clauses 3 and 3A of the First Schedule are particularly relevant) consultation by a District Council with Iwi Authorities is specifically required. Horowhenua District Council is no different to any other district council in that regard. Consultation with MTA as an iwi authority recognised by Te Puni Kokiri (albeit not yet as an MIO), would appear to be consistent with the Council's duties under section 35A(2).

The Hearings Panel notes that with respect to the preparation of district plans, the relevant provisions with respect to consultation are found in sections 74(2A), and clauses 3(1)(d) and 3B of the First Schedule. These specifically refer to Iwi Authorities. Clause 3(2) states that a local authority *may* consult with anyone else.

Can or should District Council consult with *other* Maori individuals or groups (e.g. hapu or Maori land owners)? As the final paragraph of the Explanation and Principal Reasons for Objective 1.1.1 notes, dialogue on resource management issues may be with an individual hapu, and not necessarily only an iwi authority. The Hearings Panel have come to the view that consultation could (and should) be undertaken with any members of Tangata Whenua who can establish that they represent an iwi or hapu within part of the Horowhenua District. The Council currently have several Memoranda of Partnerships with specific Iwi and Hapu groups. The Council will continue to enter into Memoranda of Partnership with such groups as it sees fit. These agreements will include undertakings regarding consultation on relevant issues with those groups and may include specific reference to District Plan related matters. Consultation might also be required with respect to any provisions in the district plan that might affect Maori land owners (collectively or as individuals). In other words, where a person or group specifically *wishes* to be consulted with, it seems to the Hearings Panel that the views of such groups cannot be disregarded because they are not necessarily those of an iwi authority (in this case the MTA). Indeed, we consider this must be the case, because as individual submitters, their submissions have to be given the same weight as a submission from any other submitter, and considered on their merits. However unless that group is recognised as an iwi authority, it is clear to the Hearings Panel that they cannot claim to represent a conflicting view on behalf of an iwi as a whole.

Whether or not the Muaupoko Co-operative Society is to be recognised as an Iwi Authority is completely outside the scope of these hearings, and is a matter between Tangata Whenua and the Crown. However they want to be part of the consultation "loop".

In terms of resource consents, an applicant is not required to consult with *any* party, including an Iwi Authority (MIO). However it is obviously good practice to do so in circumstances where the interests of tangata whenua could be affected. In these circumstances, a judgement would have to be made as to whether consultation should be undertaken with Tangata Whenua who are known to be specifically affected by a proposal, and as well as with an MIO.

Turning now to references to consultation within the District Plan, adoption of the words "Mandated Iwi Authority" appear to be unusual in district plans. The Hearings Panel considered that there would be merit in amending the terminology within Chapter 1 relating to consultation and the relationship between the Council and Tangata Whenua. We note that Chapter 1 of the District Plan uses the words Tangata Whenua and iwi within a range of contexts, and we do not see any significant issue with the continued use of the word "iwi". The word iwi is also used in Chapter 5 (Coastal Environment" and Chapter 13 (Historic Heritage), but not the term "iwi authority". On the other hand, Policy 1.1.4 refers to engagement between "the Council and Tangata Whenua over resource management issues of concern" (as do Policies 1.1.3 and 1.1.6) while Policy 1.1.5 refers to "authorised and mandated iwi representatives".

Finally on the issue of terminology, Part A "Introduction" contains a section entitled "Statutory Acknowledgements". Decisions made by a separate Hearings Panel in response to submissions relating to this section, and to the contents of the officers report, have adopted the term "Maori Claimant". However this is used within the specific context of an introductory section relating to Treaty settlements, so it is a separate matter to that addressed through the Objectives and Policies.

Otherwise, we consider it would be desirable to adopt more 'neutral' terminology, by reference to the term "Tangata Whenua". The use of the word "iwi" can be retained, but the term "mandated iwi authority" should be replaced wherever it occurs by the words "Tangata Whenua". The exception to this is where the RMA makes specific reference to iwi authorities - for example in terms of section 74 of the Act.

It would then be open to the Council or an applicant to determine requirements with respect to consultation, bearing in mind that it is still likely that any Iwi Authority (MIO) will need to be consulted (depending on the nature of the application), but it may not be the *only* party consulted. From our understanding of the submitter's position, they do not have any concerns with the use of the words "iwi" or "hapu" but only with exclusive reference to "Iwi Authorities ". Notwithstanding that, we need to make it clear to submitters that whether or not consultation is undertaken with parties other than an Iwi Authority (MIO), consultation with iwi authorities is required by the legislation, such as under Clauses 3 and 3B of the First Schedule of the RMA, and section 74 of the RMA.

The Hearings Panel resolved to amend the final paragraph on page 1-11 to read as follows:

*The RMA makes varying references to "Maori", "Tangata Whenua", and "Iwi Authorities" and "tribal Runanga". The Council recognises that, as individual resource management issues arise, it is important to have dialogue with the people who have the closest interest in the issue. ~~This may be an Iwi Authority but may also be an individual hapu.~~ The Council will, in accordance with the relevant provisions of the RMA, consult with Tangata Whenua ~~seek the guidance of the mandated Iwi Authorities~~ to understand the most appropriate point of contact for such dialogue, which may include iwi or hapu. In the preparation and change of district plans it will undertake consultation Tangata Whenua, including with Iwi Authorities (MIO's) in accordance with Clauses 3 and 3B of the First Schedule of the RMA, and also ~~and~~ to take into account identify any Iwi Management Plans recognised by Iwi Authorities and lodged with the Council, pursuant to section 74(2A) of the Resource Management Act.*

In addition, as a consequential amendment, references within the District Plan to "mandated iwi authorities" are to be changed to "Tangata Whenua" wherever this term occurs, except where the



Act specifically requires otherwise. On the basis of these amendments, the submission point of P. Taueki was accepted in part.

## 4.5 Methods for Issue 1.1 & Objective 1.1.1

### *Submissions Received*

Sub No.	Submitter Name	Decision Requested	Further Submission
11.04	Philip Taueki	No specific relief requested. Inferred: Amend Method 1.1 bullet four to replace Iwi authority with Tangata Whenua.	519.02 Charles Rudd(Snr) - Support
11.05	Philip Taueki	No specific relief requested. Inferred: Amend Method 1.1 Monitoring to replace Iwi authority with Tangata Whenua.	519.03 Charles Rudd(Snr) - Support
11.06	Philip Taueki	No specific relief requested. Inferred: Ratify Iwi Management Plans and Memoranda of Partnerships with Iwi.	519.04 Charles Rudd(Snr) - Support
11.07	Philip Taueki	No specific relief requested. Inferred: Open the discussion forum to Tangata Whenua not only Iwi authorities.	519.05 Charles Rudd(Snr) - Support
11.08	Philip Taueki	No specific relief requested.	519.06 Charles Rudd(Snr) - Support
11.09	Philip Taueki	No specific relief requested.	519.07 Charles Rudd(Snr) - Support
11.10	Philip Taueki	No specific relief requested. Inferred: Delete method referring to an Iwi Consultation Guide.	519.08 Charles Rudd(Snr) - Support

P. Taueki lodged a number of submission points in relation to provisions in Chapter 1 concerned with the manner in which the Council liaises and consults in various ways with Tangata Whenua. These changes include the "Methods" the "Explanation and Principal Reasons" and "Issues".

The Hearings Panel considers it would be appropriate, except where the wording of the RMA specifically indicates otherwise, that the relationships between the Council and Tangata Whenua in Horowhenua makes reference to *Tangata Whenua*, rather than "Iwi authorities". This issue was discussed at some length in the previous Part 4.4 of these decisions. Consultation with any mandated Iwi "authority" would and should still occur where required by law under the RMA, but would not exclude consultation with other parties.

The Hearings Panel have identified those parts of Chapter 1 which are subject to submissions from Mr Taueki, and that for consistency has identified any other provisions make reference to iwi authorities with respect to consultation. The wording amendments are set out in detail in Appendix A to these decisions.

On the above basis, the Hearings Panel resolved that the submission points of Mr P. Taueki be accepted in part.

#### 4.6 Methods for Issue 1.2 & Objective 1.2.1

##### ***Submissions Received***

Sub No.	Submitter Name	Decision Requested	Further Submission
117.31	New Zealand Historic Places Trust (NZHPT)	No specific relief requested. Inferred: Retain 1.2 Methods	

NZHPT have supported the 'method' of Council's future investigative cultural heritage survey and hope that all historic marae of the district can be recognised. The Hearings Panel were advised that undertaking a cultural landscape survey of the district is identified as a further work commitment as part of the District Plan Review. Although roundly criticised by for delay by a range of submitters, the features to be identified in the District Plan must await completion by the Council of a survey of cultural heritage sites. Whether or not this will include listing marae in the District Plan has yet to be resolved as part of the survey and with iwi and hapu. The Hearings Panel considered that the submission point be accepted in part, as the 'Methods' will be retained. However, the inclusion of historic marae in the District Plan is considered premature at this point. No changes to the wording of this method are considered necessary.

#### 4.7 Methods for Issue 1.3 & Objective 1.3.1

##### ***Submissions Received***

Sub No.	Submitter Name	Decision Requested	Further Submission
117.03	New Zealand Historic Places Trust (NZHPT)	No specific relief requested.	

NZHPT supports in-part the method of using silent files, but claims that case law has determined that holding silent files could be *ultra vires* and that this method could be subject to challenge. The reporting officer commented that use of silent files for local wahi tapu sites is not something that has been utilised previously by this Council, although it has been used by other Councils. The reporting officer also commented that he was unaware of the case law referred to by the submitter, who did not attend the hearing to elaborate on the matter. The Hearings Panel does acknowledge that there is potential for difficulties if circumstances ever arose where an applicant was aggrieved that that their proposal might be declined on the basis of undisclosed information, or on the basis of material was not open to a submission process. However we note that the provision refers to a 'method' rather than a rule, and recognising the cultural sensitivities around the protection of significant sites, considered the adoption of silent files as a method was acceptable in these circumstances. The Hearings Panel resolved that the submission point be accepted in part to the extent that it supports the concept of silent files.

## 4.8 Anticipated Environmental Result 1(g)

### Submissions Received

Sub No.	Submitter Name	Decision Requested	Further Submission
67.03	Taiao Raukawa Environmental Resource Unit	Amend Anticipated Environmental Result 1(g) as follows:  Greater public awareness of Tāngata Whenua and their customary rights and relationships with taonga, <u>including lands, coastlines, waterways, foothills and mountain ranges, etc.</u>	

Taiao Raukawa Environmental Resource Unit sought an amendment to 'Anticipated Environmental Result' 1(g) which reads:

*“Greater public awareness of Tāngata Whenua and their customary rights and relationships with taonga”.*

While supporting this provision in part, the submitter sought that the words “lands, coastlands, waterways, foothills and mountain ranges” be added to the text to provide a better understanding of what might form part of the customary rights and relationships Tangata Whenua have with their taonga. The reporting officer noted that whether intentionally or not, the submitter has used the phrase 'etc' to perhaps suggest that there might be other elements and to address this possibility in a more formal manner, suggested that the words “but not limited to” be added immediately prior to the additional text sought. The Hearings Panel supported this approach and the additional wording sought by the submitter, and recommended that it be accepted in part. Text changes are contained in Appendix A.

## 4.9 General Matters

### Submissions Received

Sub No.	Submitter Name	Decision Requested	Further Submission
11.00	Philip Taueki	No specific relief requested.	
11.11	Philip Taueki	No specific relief requested.	519.09 Charles Rudd(Snr) - Support
11.12	Philip Taueki	Amend Chapter 1 to remove all references to 'lwi authorities'.	519.10 Charles Rudd(Snr) - Support
60.03	Muaupoko Co-operative Society	No specific relief requested.  Inferred: Delete Chapter 1 in its entirety.	519.27 Charles Rudd(Snr) - Support

The submissions have been addressed previously under Part 4.4 and 4.5 of these decisions, which primarily address concerns that the submitters have about consultation.

P.Taueki has in fact been supportive of a number of provisions in Chapter 1, notably the content of Policies 1.1.2 - 1.1.7. The primary areas of opposition relate to concerns that iwi authorities are effectively being promoted as a "one-stop shop" for consultation purposes, which Mr Taueki and others have strongly contested as discussed earlier in Part 4.4 these decisions. As a consequence of considering the content of these submissions, a significant number of changes have been made with reference to the consultation provisions within Chapter 1.

Submitters have also expressed concerns about the management of land use on the margins and in the wider catchment of Lake Horowhenua, and the inadequate protection of sensitive cultural sites in the District Plan. However as noted by the reporting officer, there is only limited indication in the submissions of the kind of text changes sought with respect to the text of the District Plan. We also note and agree with the reporting officer, that although there are undoubtedly improvements that could otherwise be made to the content of the District Plan with respect to *mauri* and the relationship between Tangata Whenua and their ancestral lands, the District Plan does address this issue far more explicitly than was the case under the Operative Plan. Objective 1.2.1. and Policy 1.2.2 both specifically seek that the Proposed Plan does recognise and provide for the relationship of Tangata Whenua and their culture and traditions (including mauri) with their ancestral lands coastal areas, waterways, heritage landscapes and cultural sites of significance, wahi tapu, wahi tupuna and other taonga. The Hearings Panel also accepts that the further work proposed to begin later this year on more comprehensively identifying heritage and cultural sites in the district has the potential to go some way towards addressing these concerns.

The Hearings Panel considers that submission points 11.00 and 11.11 from P. Taueki be rejected, but only on the basis that the amendments sought to the text of the District Plan by the submitter were not clear. However his submission point 11.12 and that of the Muaupoko Co-operative Society were accepted in part to the extent of the amendments described in parts 4.4 and 4.5 this decisions relating to the role of iwi authorities.

#### **4.10 Rules 16.6.21(a) and 19.6.13(a) – Sites of Significance to Tangata Whenua**

##### ***Submissions Received***

<b>Sub No.</b>	<b>Submitter Name</b>	<b>Decision Requested</b>	<b>Further Submission</b>
37.05	Homestead Group Limited	Delete Rule 16.6.21(a)	

<b>Sub No.</b>	<b>Submitter Name</b>	<b>Decision Requested</b>	<b>Further Submission</b>
38.00	Range View Ltd & Page	Delete Rule 19.6.13(a)	526.29 Truebridge Associates - Support
46.00	Vincero Holdings Ltd	Delete Rule 19.6.13(a)	

**Homestead Group Limited** oppose Rule 16.6.21(a), which along with Rule 19.6.13 (a) which is opposed by **Range View Ltd and Vincero Holdings Ltd**, states that:

*"No activity or development shall lead to the modification, demolition or removal of any site of*

*significance to Maori where such site has been identified to the Council prior to the time that any activity or development is proposed".*

These rules relate to the Industrial and Rural zones respectively. However we were advised that also applies in other zones (Rule 15.6.29, Rule 17.6.23 and Rule 20.6.20).

Mr B.Holmes gave evidence of behalf of Homestead Group Limited with respect to these rules, noting that case law has established that any qualifying criteria for permitted activities need to be "clearly specified and capable of objective attainment". Mr Holmes was concerned that the phrase "significance to Maori" was subjective and open to differing interpretation; that it would be difficult for a potential landowner to discern whether their activity requires consent, which in turn could compromise an ability to make reasonable use of land; and the fact that the District Plan does not identify sites of significance to Maori. In some respects, this submission raises similar issues to that touched on by NZHPT in Part 4.7 of these decisions.

The submitter's case is that the provisions under the Historic Places Act provide sufficient safeguards, as consent will be required under that legislation for sites known to have archaeological significance. However in his view, the rules added a significant degree of uncertainty with respect to future investment. By way of example, he illustrated a circumstance which might arise which would cause an applicant to "walk away" because of the uncertainties associated with whether the project actually needed consent, or could obtain consent.

The reporting officer commented that the "rule has essentially been carried over from the Operative Plan", although we observed that in itself does not reduce the extent to which the rule is open to challenge. Accepting that the wording of the rule has its shortcomings, the reporting officer noted that sites and areas of significance to tangata whenua will be incorporated into the District Plan, or may be identified through Iwi Management Plans.

The officer went on to comment that:

*"Relying on the Historic Places Act 1993 (HPA) for the protection of sites of significance to Tangata Whenua is not considered effective in achieving the objective of protecting these sites. The HPA only protects archaeological sites (pre-1900) and has a different role and purpose than the RMA. Sites of significance to Tangata Whenua may not have any archaeological evidence. I also understand that from an Iwi perspective relying on the HPA is not always an approach favoured by Iwi as there is a sense that Iwi do not have an ability to participate in this process".*

The reporting officer also considered that the "rule" was also consistent with Objective 1.3.1 and Policies 1.3.3 and 1.3.5. The Hearings Panel notes that these provisions don't authorise a rule of the nature subject to the submission, but only that sites of significance to Maori should not be disturbed or destroyed.

The Hearings Panel was aware through the hearings process that Maori were dissatisfied with the protection given to sites of cultural significance on the basis that NZHPT had given consent to sites to be disturbed previously without any involvement by iwi. They were also very dissatisfied that sites and areas of significance had not yet been identified in the District Plan. We are aware that the nature and extent of such identification (which we were told would be a priority work for Council after September 2013) could also in itself be contentious with respect to private property rights. However it is apparent that this issue is going to be contentious until such time that the identification of areas in sites is completed, which provides a degree of certainty to both landowners/developers on one hand, and local iwi on the other.

The Hearings Panel were nevertheless concerned about the subjective nature of this rule and the uncertainty of its application from the perspective of both potentially affected landowners and Tangata Whenua. Officers were requested to further consider the matter in light of legal advice, the result of which was that it was accepted that the rule in terms of its current wording would be *ultra vires*, but that this defect could be remedied in the following way:

*"No activity or development shall lead to the modification, demolition or removal of shall modify, demolish, or remove any site of significance to Maori where such site has been identified to the Council and recorded by the Council in a register of sites prior to the time that any activity or development is proposed".*

With some reservations, we accept that this rewording is an improvement on the existing rule provisions, and to the extent that it would provide a greater degree of certainty, is acceptable. Our view however has been significantly influenced by the fact that the Council staff have strongly emphasised that there is a Council commitment to commencing survey of heritage and culturally significant sites in the district before the end of 2013 with the specific aim of identifying such sites in the District Plan. In that context, the rewording of rule above is an adequate interim measure. We are in no doubt that the proper place for such sites to be identified is actually in the District Plan, as it is undesirable for potential landowner/developers to have to refer to documents outside the District Plan to determine compliance.

On this basis, we have resolved that the three submission points be accepted in part. This will require text changes to Rules 16.6.21 (a), and consequential amendments to the identical rule in other zones. This in turn raises the issue of scope with respect to changing the rule in other chapters, but the Hearings Panel considers that such an amendment would be within the scope of Clause 16(2) to the First Schedule to the RMA.

## **5.0 SECTION 32**

- 5.1 The Hearings Panel were of the opinion that most of the matters raised through the hearing concerned the nature of the relationship between the Council and Tangata Whenua, rather than the regulatory efficiency and effectiveness of the objectives policies and rules in the District Plan.
- 5.2 P. Taueki and the Muaupoko Co-operative Society have across the range of their submission points, expressed concerns about (1) consultation issues and the role of the MTA and the Council; (2) the failure of the Council to identify and protect sites of cultural significance; (3) the failure of the Council to protect water bodies and Lake Horowhenua in particular, including from land use activities and treatment facilities adjacent to the lake.
- 5.3 Chapter 1, the subject of this hearing, primarily deals with the first of these matters. The Hearings Panel has made refinements to the consultation provisions which recognise a broader range of parties being involved in consultation issues, and to that extent the amended provisions are seen as more appropriate means of achieving the Purpose of the Act, and providing more effectively for input by Tangata Whenua.
- 5.4 With respect to the protection of sites having heritage and cultural significance, there has been significant criticism of delays in the identification and protection of such sites, both from Tangata Whenua and from other parties. As indicated in a separate Hearings Panel

decision relating to Historic Heritage, while the Hearings Panel has no direct authority to require that work on this task be undertaken (as this is operational decision of the Council), it has been indicated to us that the Council is expected to start work in September 2013. Until this work is done, the Council has made changes to the District Plan to provide interim protection in the meantime. However it is acknowledged that the most efficient and effective way of adequately addressing the protection of sites of historic and cultural significance is through a more comprehensive and detailed identification of sites, something which is not yet been fully achieved. This will inevitably involve some degree of regulatory control over the development of land within the district, which we expect will be potentially controversial, and will itself be subject to further assessment at the appropriate time under Section 32.

- 5.5 The protection of water quality in the district's water bodies is clearly the statutory responsibility of the Horizons Regional Council, and the Hearings Panel are satisfied that it would not be effective or efficient, or even within the powers of the District Council, to set up duplicate provisions to those of the Regional Council.
- 5.6 The submissions by the Homestead Group raised potential issues in terms of Section 32 in terms of whether a rule requiring consent for developments affecting cultural sites provided sufficient legal certainty. On this basis, it could be argued to have indeterminate application to land and might not be efficient or effective, because it could have the effect of requiring resource consents in situations where there may not be an adverse effect on a cultural site. The Hearings Panel continues to have some reservations about the nature of the amended rule, but consider that it is an appropriate response pending the forthcoming review of heritage and cultural sites in the district, which should enable the identification in plan form (and with greater certainty), those areas or sites having cultural and heritage significance.

## 6.0 DECISION

For all of the foregoing reasons we resolve the following:

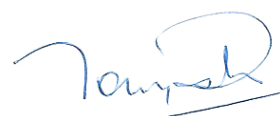
1. That pursuant to clause 10 of Schedule 1 to the Resource Management Act 1991 that the Horowhenua District Plan be amended as set out in Appendix A to this decision.
2. That for the reasons set out in the above report submissions and further submissions are accepted, accepted in part or rejected as listed in Appendix B to this decision.



**Robert Nixon (Chair)**



**Cr Garry Good**



**Cr Tony Rush**

**Dated: 23 September 2013**

## APPENDIX A: Proposed Plan as amended by Hearing Decisions

The following amendments have been made to Chapter 1 "Matters of Importance to Tangata Whenua".

1. Amend the second paragraph of the Statement of Muaupoko as follows:

"Muaupoko have many traditional hapu. Those currently active are: ~~Ngati Pariri, Ngati Hine, Ngati Tamarangi, Ngati Whanokirangi, Ngati Te Ao, Te Ngarue and Punahau.~~

- Ngai te Ngarue
- Ngai te Ao
- Ngati Tamarangi
- Ngati Hine
- Ngati Pariri
- Ngati Whanokirangi
- Punahau."

2. Amend the fifth paragraph of the Statement of Muaupoko as follows:

~~"At the time of preparing this Proposed District Plan the Muaupoko Tribal Authority Incorporated was listed by Te Puni Kokiri under "Te Kotaha o nga Ropu Mangai Iwi/Maori" as an Iwi authority is the recognised Mandated Iwi Authority representing Muaupoko for the purposes of the RMA. The Muaupoko Tribal Authority encourages and invites consultation should people wish to know its views and obtain information regarding sites and areas of cultural significance to Muaupoko."~~

3. Amend the final paragraph of the Statement of Muaupoko as follows:

~~Please note that the Punahau (Horowhenua) Lake Bed and Hokio Stream includes specific land adjacent to them are owned by the Lake Horowhenua Trust.~~

The status of Lake Horowhenua and the Hokio Stream is described under the Reserves and Other Lands Disposal Act 1956 as follows:

"Notwithstanding anything to the contrary in any Act or rule of law, the bed of the lake, the islands therein, the dewatered area, and the strip of land 1 chain and with around the original margin of the lake (as more particularly secondly described in subsection (13)) are hereby declared to be and have always been owned by the Maori owners, and the said lake, islands, dewatered area, and strip of land are hereby vested in the trustees appointed by Order of the Maori Land Court dated 8 August 1951 in trust for the said Maori owners.

Notwithstanding anything to the contrary in any Act or rule of law, the bed of the Hokio Stream and the strip of land 1 chain in width along portion of the north bank of the said stream (being the land more particularly thirdly described in subsection (13)), excepting thereout such parts of the said bed of the stream as may have at any time been legally alienated or disposed of by the Maori owners or any of them, are hereby declared to be and have always been owned by the Maori owners, in the said bed of the stream and the said strip of land are hereby vested in the trustees appointed by Order of the Maori Land Court dated 8 August 1951 in trust for the said Maori owners".



This Lake is also a Muaupoko Fisheries Reserve and there are prohibitions associated with fishing in these areas. Muaupoko Tribal Authority encourages consultation with this Trust should people wish to know their views.

4. Amend the Statement of Ngāti Raukawa as follows:

Paragraph 1: Amend to read as “Ngāti Raukawa and affiliates (like Kauwhata (Feilding), Tukorehe (Kuku)...”

Paragraph 1: Include a new sentence at the end of Paragraph 1 as follows: “The legacies set down by ancestral Māori land tenure activities during Te Rauparaha and his allies' time for Ngāti Raukawa and affiliates, continue to this day.”

Paragraph 5: Include new bullet point to list (as first bullet point) as follows:

- Tuku Whenua - Gifting land; ...

Paragraph 6: Amend third sentence as follows: “Embedded cultural markers, whether urupā, burial grounds, cemeteries, wāhi tapu, pā sites, former papa kainga, wāhi tūpuna...”

Paragraph 6: Include new bullet point list of marae after second sentence as follows (listed from north to south):

- Te Au, Himatangi;
- Paranui, Himatangi;
- Motuiti, Himatangi;
- Whakawehi, Shannon;
- Kereru, Kōptāraoa;
- Matau, Kōptāraoa;
- Huia, Poroutawhao;
- Ngātokowaru; Hōkio
- Kikopiri, Muhunoa;
- Tukorehe, Kuku;
- Wehiwehi, Manakau.

5. Amend the Statement of Ngāti Raukawa to include the following text after paragraph 6:

“...natural systems in Horowhenua. In particular, Council needs to note that customary interests in certain areas such as Omarupapako, Round Bush Reserve will be referred back to Crown for further consideration, and if need be, for amendment of the Ngāti Apa legislation. The Ngāti Raukawa Treaty Claims team flag with Council that the Ngāti Apa claim will be challenged before the Waitangi Tribunal. Council need note too that Ngāti Raukawa and affiliates are determining their customary interests and mana tuku iho, exercised by Iwi, hapū and whanau as tangata whenua to certain areas of the marine and coastal region of Horowhenua. Whanau, hapū or Iwi groups have until March 2017 to seek customary marine title or claims to the common marine and coastal area. This can be done through specific negotiations with the Crown or through an application to the High Court.”

6. Amend Chapter 1 Introduction to Include a new heading above paragraph 3 on page 1-6 (below dissecting line) to read as follows “Statutory Duties and Responsibilities under the RMA”.

7. Amend the final paragraph of the Explanation and Principal Reasons for Objective 1.1.1 and Policies 1.1.2 - 1.1.7 (page 1-13) as follows:

"The RMA makes varying references to "Maori", "Tangata Whenua", and "Iwi Authorities" and "tribal Runanga". The Council recognises that, as individual resource management issues arise, it is important to have dialogue with the people who have the closest interest in the issue. ~~This may be an Iwi Authority but may also be an individual hapu.~~ The Council will, in accordance with the relevant provisions of the RMA, consult with Tangata Whenua ~~seek the guidance of the mandated Iwi Authorities~~ to understand the most appropriate point of contact for such dialogue, which may include Iwi or hapu. In the preparation and change of district plans it will undertake consultation nga hapu and nga Iwi, including with Iwi authorities (MIO's) in accordance with Clauses 3 and 3B of the First Schedule of the RMA, and also and to take into account identify any Iwi Management Plans recognised by Iwi Authorities and lodged with the Council, pursuant to section 74(2A) of the RMA".

8. Incorporate the following detailed amendments to Chapter 1 as follows;

- **Methods for Issue 1.1 and Objective 1.1.1 (District plan)**

Fourth bullet point - change the words "the survey should be undertaken in consultation with Iwi authorities and ..... "....."

and "to discuss with each Iwi authority how sites...."

to read " *the survey should be undertaken in consultation with Tangata Whenua and .....*"

and "to discuss with Tangata Whenua how sites ....."

Fifth bullet point - change the words "..... to engage with the relevant Iwi authority early in the process, including making available to the Iwi authority a copy of the application ....."

to read "..... to engage with Tangata Whenua early in the process including making available a copy of the application ....."

- **Other Council Initiatives**

Second bullet point - change the words "..... Council will work through Iwi authorities to encourage ....."

to read ".....Council will work with Tangata Whenua to encourage.....".

Third bullet point - change the words "..... relationship agreements between Council and Iwi authorities."

to read "..... relationship agreements between Council and Tangata Whenua ".

(**Note:** no change required to the fourth bullet point, as section 33 RMA specifically refers to the transfer of powers to Iwi authorities)

Fifth bullet point - change the words "..... how the Council and Iwi authorities can effectively interact....."

to read "..... how the Council and Tangata Whenua can interact....."

Sixth bullet point - change the words "Council will work with Iwi authorities to develop....."

to read *"Council will work together with Tangata Whenua to develop....."*.

- **Objectives and Policies - Explanation and Principal Reasons**

Amend the words in the third paragraph *"..... Council will be largely dependent on Tangata Whenua, through Iwi authorities, identifying opportunities....."*

to read *"..... Council will be largely dependent on Tangata Whenua, identifying opportunities....."*

- **Methods to Issue 1.2 and Objective 1.2.1**

**Other initiatives**

First bullet point - amend the words *"The Council will continue to welcome engagement with Tangata Whenua, through Iwi authorities, about other methods....."*

to read *"The Council will continue to welcome engagement with Tangata Whenua about other methods....."*

Second bullet point - amend the words *".....and will work cooperatively with Iwi authorities to achieve....."*

to read *".....and will work cooperatively with Tangata Whenua to achieve....."*

Third bullet point - amend the words *"These procedures describe how the Council and Iwi authorities can effectively interact....."*

to read *" These procedures describe how the Council and Tangata Whenua can effectively interact....."*

**Issue 1.3**

**Issue Discussion**

Amend the words and the second paragraph *"The Council intends to work with Tangata Whenua, through Iwi authorities, to better understand....."*

to read *"The Council intends to work with Tangata Whenua, to better understand....."*

- **Methods for Issue 1.3 and Objective 1.3.1**

First bullet point - amend the words *"..... as requested by Iwi authorities"*

to read *"..... as requested by Tangata Whenua"*.

Second bullet point – amend the words *"..... to engage with the relevant Iwi authority early in the process....."*

to read *" to engage with Tangata Whenua early in the process....."*

Third bullet point - amend the words *"..... the Council will make available, on request or by prior arrangement, a copy of the application to the relevant Iwi authority,....."*

to read *".....the Council will make available, on request or by prior arrangement, a copy of the application to Tangata Whenua as relevant and appropriate ,....."*

Fifth bullet point – amend the text of this bullet point *"Council will work together with Iwi authorities to develop an Iwi Consultation Guide for consent applicants to assist in understanding the, who, how, why and when to consult with Iwi"*

to read *"Council will work together with Tangata Whenua to develop a Consultation Guide for consent applicants to assist in understanding the, who, how, why and when to consult with Iwi and hapu"*.

- **Other Initiatives**

First bullet point - amend the text of the second bullet point *"The Council will engage with through Iwi authorities, and the owners of land....."*

to read *"The Council will engage with Tangata Whenua, and the owners of land....."*

Second bullet point - amend the words *"Council will together with Iwi authorities develop accidental discovery protocols....."*

to read *"Council will together with Tangata Whenua develop accidental discovery protocols....."*

Third bullet point - *"Council will work together with Iwi authorities to develop and agree....."*

to read *" Council will work together with Tangata Whenua to develop and agree....."*

Amend the text in the final paragraph reading *"Continued dialogue between the Council and Tangata Whenua, through Iwi authorities is considered to be....."*

to read *"Continued dialogue between the Council and Tangata Whenua, is considered to be....."*

- **Methods for Issue 1.4 and Objective 1.4.1**

**District Plan** - Amend the text of the third bullet point stating *"Council will work with Iwi authorities to investigate....."*

to read *"Council will work with Tangata Whenua to investigate....."*

- **Other Council Initiatives**

Second bullet point - amend the text which states *"..... through relationship agreements between Council and Iwi authorities"*

to read *"..... through relationship agreements between Council and Tangata Whenua"*

**Note;** no change required to the first bullet point under "Other Council Initiatives", as the reference there to Iwi authorities is related to the preparation of Iwi Management Plans as required by section 74 of the Act.

- **Anticipated Environmental Results**

Amend subclause 1 (b) stating "..... with the Council holding silent files of wahi tapu, as requested by Iwi authorities"

to read "..... *with the Council holding silent files of wahi tapu, as requested by Tangata Whenua*"

9. Amend Anticipated Environmental Result 1(g) on page 1-22 as follows:

"Greater public awareness of Tāngata Whenua and their customary rights and relationships with taonga, including but not limited to lands, coastlines, waterways, foothills and mountain ranges."

10. Amend the wording of the following rules entitled "Sites of significance to Tangata Whenua";

15.6.29 (Residential Zone)

16.6.21 (Industrial Zone)

17.6.23 (Commercial Zone)

19.6.13 (Rural Zone)

20.6.20 (Open Space)

as follows:

"No activity or development shall ~~lead to the modification, demolition or removal of~~ modify, demolish or remove any sites of significance to Maori where such site has been identified to Council and recorded by the Council in a register of sites prior to the time that any activity or development is proposed".

## APPENDIX B: Schedule of Decisions on Submission Points

Sub. No	Further Sub. No.	Submitter Name	Further Submitter Position	Hearing Panel Decision
11.01	519.00	Taueki Rudd	Support	Accept In-Part Accept In-Part
60.02		Muaupoko Co-operative Society		Accept In-Part
67.01		Taiao Raukawa Environmental Resource Unit		Accept
67.02		Taiao Raukawa Environmental Resource Unit		Accept
67.10		Taiao Raukawa Environmental Resource Unit		Accept
109.02		Rudd		Reject
109.03		Rudd		Accept
109.05		Rudd		Accept In-Part
83.00		Hood		Reject
11.02		Taueki		Accept
11.33		Taueki		Accept
11.34		Taueki		Accept
11.35		Taueki		Accept
11.36		Taueki		Accept
11.37		Taueki		Accept
11.03	519.01	Taueki Rudd	Support	Accept In-Part Accept In-Part
11.04	519.02	Taueki Rudd	Support	Accept In-Part Accept In-Part
11.05	519.03	Taueki Rudd	Support	Accept In-Part Accept In-Part
11.06	519.04	Taueki Rudd	Support	Accept In-Part Accept In-Part
11.07	519.05	Taueki Rudd	Support	Accept In-Part Accept In-Part

Sub. No	Further Sub. No.	Submitter Name	Further Submitter Position	Hearing Panel Decision
11.08	519.06	Taueki Rudd	Support	Accept In-Part Accept In-Part
11.09	519.07	Taueki Rudd	Support	Accept In-Part Accept In-Part
11.10	519.08	Taueki Rudd	Support	Accept In-Part Accept In-Part
117.31		New Zealand Historic Places Trust (NZHPT)		Accept In-Part
117.03		New Zealand Historic Places Trust (NZHPT)		Accept In-Part
67.03		Taiao Raukawa Environmental Resource Unit		Accept In-Part
11.00		Taueki		Reject
11.11	519.09	Taueki Rudd	Support	Reject Reject
11.12	519.10	Taueki Rudd	Support	Accept In-Part Accept In-Part
60.03	519.27	Muaupoko Co-operative Society Rudd	Support	Accept In-Part Accept In-Part
37.05		Homestead Group Limited		Accept In-Part
38.00	526.29	Range View Ltd & Page Truebridge Associates	Support	Accept In-Part Accept In-Part
46.00		Vincero Holdings Ltd		Accept In-Part