

# Te Ao Māori Hearing

## Volume 1 - Part 3

### Chapter 4

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### 3.1 Introduction

This decision of the Regional Council is made by the Te Ao Māori Hearing Panel.

The decision deals with Chapter 4, “Te Ao Māori - Resource Management Issues of Significance to Hapu and Iwi” (its title as notified) and related Glossary terms, and comprises:

- Part 1 (Introduction, Comments Forming Part of All Decisions and Conclusion) of this Volume;
- This Part, where, among other things, we set out our evaluation of the submissions and our reasons for accepting or rejecting them;
- Part 3 of Volume 2, which sets out the summary of submissions and further submissions and our decision in respect of each; and
- Chapter 4 and the relevant Glossary definitions shown in the marked-up version of the POP in Volume 3 (clean version in Volume 4).

The Te Ao Māori Hearing Panel comprised:

- Joan Allin (Chairperson);
- Jill White;
- Lynne Bailey;
- Lindsay Burnell;
- Annette Main;
- Rob van Voorthuysen; and
- Che Wilson.

The hearing was held on 8, 11, 13 and 14 August 2008 and 3 September 2008. One submitter<sup>1</sup> was heard on 1 July 2008 at a hearing that provided an opportunity for submitters who wished to present all, or part, of their submission or further submission (which we refer to either as separate terms or as submission) on different topics at one time. The Hearing Panel at that hearing included the members of this Panel.

### 3.2 Submissions and Further Submissions Received

The submitters and further submitters on Chapter 4 are listed below. Further submission numbers are those above number 473.

<b>Submission No.</b>	<b>Submitter</b>
401	Alison Margaret Mildon
521	Allco Wind Energy NZ Ltd (Allco)
464	Aohanga Incorporation
454	Ballance Agri-Nutrients Ltd
209	Charles Rudd
470	Colin Bond
443	Diana Baird
356	Environment Network Manawatu
386	Environmental Working Party
501	Ernslaw One Ltd

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<sup>1</sup> Environment Network Manawatu.

398 and 487	Fonterra Co-operative Group Limited (Fonterra)
268 and 525	Genesis Power Ltd (Genesis)
369	Grant John Stephens
2	Hoane Titari John Wi
182	Horizons Regional Council
280 and 515	Horowhenua District Council
357 and 531	Horticulture New Zealand (Horticulture NZ)
366	Jill Strugnell
440	Landlink Ltd (Landlink)
340 and 507	Manawatu District Council
148	Maraekowhai Whenua Trust and others
231	Mars Petcare Limited
394	Mason Stewart
363 and 522	Meridian Energy Limited
359 and 519	Mighty River Power Limited
492	Minister of Conservation
226	New Zealand Archaeological Association Inc
353 and 518	New Zealand Historic Places Trust - Central Region
427	Ngā Pae o Rangitikei
180	Ngāti Kahungunu Iwi Incorporated (NKII)
228	Ngāti Pareraukawa
241 and 481	Palmerston North City Council
452	Paul & Monica Stichbury
346 and 517	Rangitikei District Council
442	Robert Leendert Schraders
151 and 495	Ruapehu District Council
467	Shona Paewai
396	Sue Stewart
238	Tanenuiarangi Manawatu Inc (TMI)
374	Taranaki / Whanganui Conservation Board
395 and 527	Tararua-Aokautere Guardians Inc (TAG)
172 and 500	Tararua District Council
461	Te Iwi o Ngāti Tūkorehe Trust
468	Tony Paewai
358 and 511	TrustPower Limited
377	Tuwharetoa Maori Trust Board
291 and 532	Wanganui District Council
288 and 480	Winstone Pulp International Limited (WPI).

### 3.3 Reports, Evidence and Other Material

In terms of the Regional Council:

- we received reports and evidence from Helen Marr, a planner and the Council's One Plan Manager, and heard in person from Ms Marr;
- we received a report from John Maassen, resource management lawyer; and
- at the hearing, Chris Veale from the Council provided a demonstration of how the Council's database allows access to a variety of information relevant to Māori in the Region.

We also received written reports from Richard Thompson, meeting facilitator, on pre-hearing meetings that had taken place.

In terms of submitters, we heard in person from:

- Dr Terry Kelly (Chairperson of Environment Network Manawatu) and Sally Pearce for Environment Network Manawatu (1 July 2008);
- Jill Strugnell;
- Maurice Black (Resource Management Consultant) for NKII;
- Archie Taiaroa, now Sir Archie (Secretary of the Maraekowhai and Tawata land Trusts and the Titi Tihu Farm Trusts who is also Chairman of the Whanganui River Maori Trust Board) and Kevin Amohia for Maraekowhai Whenua Trust and others;
- Charles Rudd;
- Alison Mildon and Dr Ian Christensen for TAG; and
- Maurice Takarangi, who chaired the presentation of the submission, and Jonathan Procter (adviser on cultural and environmental matters) for TMI.

We also received written evidence, legal submissions or material that was not presented orally at the hearing from:

- Paul Majurey (Legal Counsel) and Jarrod Bowler (Environmental Manager - Renewable Energy) for Genesis;
- David Forrest (Planner Principal, Good Earth Matters Consulting Limited) for Horowhenua District Council, Wanganui District Council, Rangitikei District Council, Ruapehu District Council, Manawatu District Council and Tararua District Council (TA Collective);
- Chris Keenan (Manager - Resource Management and Environment) Horticulture NZ;
- Janette Campbell (Legal Counsel) for Mighty River Power;
- Robert Schofield (Senior Principal, Boffa Miskell Limited) for TrustPower; and
- Rob Hart (Legal Counsel) for WPI.

By the end of the hearing, there was a large degree of consensus among the parties so the evidence and submissions are not summarised in any detail in this decision. However, specific matters are referred to as appropriate.

### **3.4 Evaluation and Reasons**

The following sections of this Part set out our evaluation of the submissions and our reasons for accepting or rejecting them.

We deal first with legal matters and then the principal issues of contention.

We then deal with remaining issues, arranged by subject-matter, namely by way of a sequential reference to the various headings of Chapter 4. In general, the headings we have used are the same as those in the POP as notified, although we have used macrons and some upper case for consistency within this Part. There are some combined headings, as well as new headings for new material. Where we have omitted a heading from the POP, it was because we concluded that no evaluation under that heading was needed.

Where we have dealt with a topic in legal matters or principal issues of contention, we do not repeat the reasoning in the remaining issues.

In some cases, submitters raised the same matter in their submissions on several different parts of the POP chapters. For the sake of brevity we do not repeat our evaluation of those matters under multiple POP chapter headings. Instead, we generally address the matter when it is first raised.

In addition:

- (a) some submissions may be coded under one heading in Volume 2 (or in some cases in a different Part of Volume 2 eg Part 2 Overall Plan Hearing) but the relevant reasoning may be dealt with here under a different heading; and
- (b) some matters dealt with under one heading may be relevant to other provisions or have general applicability across the chapter and so may have resulted in changes shown in Volume 3 in various provisions.

Submitters should therefore carefully read all components of the decision, including this Part and Part 1 of this Volume, the relevant Parts of Volume 2 and the relevant POP provisions in Volume 3 (clean version in Volume 4) to see how their concerns have been dealt with.

General matters that cross all hearing topics, such as the adequacy of consultation in the POP process for all chapters, including consultation in relation to Māori issues, are dealt with in Part 2 (Overall Plan Hearing) of this Volume. We therefore do not deal with consultation issues, or the adequacy of consultation, in this decision.

### **3.5 Legal Matters**

Chapter 4 forms part of the Regional Policy Statement (RPS) portion of the POP. Part 1 of this Volume discusses a range of legal matters and refers to provisions relevant to the RPS.

The National Policy Statement on Electricity Transmission 2008 is not of particular relevance to Chapter 4 of the RPS, which is focussed on matters relevant to Māori. Part 7 (General Hearing) of this Volume addresses Chapter 3 of the RPS, which includes infrastructure and energy.

In addition to s 5 of the RMA, ss 6(e) and (f) are particularly relevant for Chapter 4 (although historic heritage is dealt with specifically in Chapter 7 of the POP). A number of the objectives and policies address ss 5 and 6(e) matters. The way that s 6(e) matters are dealt with in Chapter 4 also helps to satisfy s 6(f) in the context of historic heritage relevant to hapū and iwi.

In relation to s 6(g), there was no evidence of any recognised customary activities as defined in the RMA.

In terms of s 7(a), the provisions of Chapter 4 recognise kaitiakitanga, specifically Objective 4-1(b) and Policy 4-1.

There were comments that protection of the habitat of trout and salmon, referred to in s 7(h), is not beneficial as trout and salmon are having an adverse effect on native fish.

Section 8 is also particularly relevant. In response to submissions, as is discussed later in this Part, the key principles of the Treaty espoused by the

courts have been inserted into 4.1.2 and a new method “Treaty of Waitangi - Claims” has been inserted in 4.5 as Method 4-3.

In relation to the purpose of the RPS<sup>2</sup> and contents of this chapter of the RPS<sup>3</sup>, the environmental/resource management issues of significance to hapū and iwi were set out in 4.1.4 and 4.2. As explained later, these provisions have been consolidated into 4.2 and amended and expanded in response to submissions.

Protection of registered sites<sup>4</sup> is addressed under Policy 4-2. In relation to s 61(2A)(a), we were referred to two documents: “Ngāti Rangī Waterways Document” (2002) and “Ngāti Tūwharetoa Environmental Iwi Management Plan” (2003). In Appendix 7 of the “End of hearing statement of Helen Marr for the Te Ao Māori hearing”, Ms Marr provided a detailed assessment of how the provisions of those two documents linked to the POP provisions. Based on that evidence, we are satisfied that those two documents have been taken into account in an appropriate manner. In addition, Tuwharetoa Māori Trust Board submitted on the POP and that submission is considered later in this decision. Ngāti Rangī did not make a submission on the POP.

No foreshore or seabed reserve currently exists in the Region.<sup>5</sup>

### **3.6 Principal Issues of Contention**

The principal issues of contention for the Te Ao Māori provisions were:

- (a) Should there be reference to culturally significant mountains and ridgelines?
- (b) Should references in various provisions be to iwi, hapū, or both?

#### **3.6.1 Should there be reference to culturally significant mountains and ridgelines?**

TAG and a number of other submitters sought to include reference to culturally significant mountains and ridgelines in various provisions in the chapter. Some of these various submissions were opposed in further submissions by Genesis, Mighty River Power, and Allco.

We concluded that the real concern of TAG was wind turbines. No person from a hapū or iwi appeared in support of TAG’s case.

The protection of culturally significant mountains and ridgelines had not been identified by hapū or iwi as an environmental issue of regional significance during the consultative process with the Regional Council leading to notification of the POP and none raised the issue in a submission or at the hearing.

In response to questions about the lack of reference to mountains, Mr Procter said that the Tararua Ranges are a significant taonga but for them right now the focus is on the Manawatu River.

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<sup>2</sup> Section 59.

<sup>3</sup> Section 62.

<sup>4</sup> Section 61(2)(a)(iia).

<sup>5</sup> Sections 61(2A)(b) and 62(1)(b)(ii). Marr, Planning Evidence and Recommendations Report, July 2008, page 40 section 4.5.2.

We have concluded that it is not appropriate to include the references to culturally significant mountains and ridgelines sought by TAG in the absence of the Regional Council's consultative process with hapū and iwi having identified that as an environmental issue of regional significance for inclusion in the POP.

### **3.6.2 Should references be to iwi, hapū or both?**

An issue raised is whether there should be reference to iwi, hapū or both. Chapter 4 provisions generally refer to both.

Mr Rudd's submission<sup>6</sup> is that "iwi" should be deleted and replaced with "hapū" and he explained the importance of hapū.

TMI's submission<sup>7</sup> raised the issue of why the POP emphasised hapū with iwi second and Mr Procter's evidence mainly referred to iwi. In answer to questions, Mr Procter:

- (a) noted that some were strong at the iwi level and some were strong at the hapū and that it was up to each; and
- (b) since the original submission, they have come to accept reference to iwi and hapū, as long as there is appropriate recognition.

Mr Black, in answer to our questions, agreed with the use of both terms.

Mr Taiaroa's (as he then was) evidence referred to iwi. In response to questions from the Panel, he explained the benefit of dealing with iwi or iwi authorities when there can be many hapū but said not to forget about hapū. We accept the wisdom of that.

We also accept Ms Marr's uncontested evidence that feedback to the Regional Council from tangata whenua during the development of the POP is that they would prefer for the relationship to be at both the hapū and iwi levels. We also agree with her conclusion<sup>8</sup> that it is not appropriate to change the approach at this time.

We conclude that "hapū and iwi" or "hapū or iwi" (depending on the context) should be used as both can be relevant in the resource management context. We do not accept that iwi should be deleted (or vice versa), as each has a role to play. Depending on the context, reference to tangata whenua and to iwi authorities can also be appropriate. How references are made in other chapters is a matter for other Hearing Panels.

## **3.7 Other Issues**

### **3.7.1 Te Ao Māori General and 4.1 Scope and Background**

Our view is that a separate chapter dealing with resource management issues of significance to hapū and iwi is a strength, not a weakness, of the POP. As Chapter 4 forms part of the RPS, territorial authorities will need to give effect to it under s 75(3)(c) in their district plans. In addition, it will also be a relevant factor under s 104(1)(b)(iii) for resource consent applications.

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<sup>6</sup> Rudd, 209-2.

<sup>7</sup> TMI, 238-6.

<sup>8</sup> Marr, Planning Evidence and Recommendations Report, July 2008, page 60 section 4.9.2.

As already noted in Part 1 of this Volume, the Regional Plan and Regional Coastal Plan must give effect to the RPS. Chapter 4 specifically identifies issues of significance to hapū and iwi and Policy 4-4 appropriately indicates which provisions in the POP respond to those issues. The extent to which Chapter 4 matters are cross-referenced in other chapters of the POP is a matter to be addressed in decisions on those chapters.

We agree with TMI and the Taranaki/Whanganui Conservation Board that Chapter 4 could usefully include a specific reference to the principles of the Treaty of Waitangi as s 8 of the RMA states that to be a matter that the Council must take into account when exercising its duties and functions under the RMA. We have therefore inserted the key principles into 4.1.2.

We agree with the reasons expressed by TAG<sup>9</sup> and other submitters that macrons should be used and we have done that throughout the chapter and the Glossary terms. Doing so is also consistent with the approach of the Māori Language Commission (Te Taura Whiri i te Reo Māori), which was brought to our attention by a Panel member with expertise in Māori issues.

While we accept the comments about degradation at Hokio Stream, we have concluded that including reference to a cautious approach is not required as the environmental issues relating to that resource are already known.

In terms of Mrs Strugnell's submission about the lack of focus on benefits and costs, we have concluded that, in the context of the provisions of the RMA, the provisions as amended provide an appropriate balance between benefits and costs.

We accept the comments of Ngāti Pareraukawa and TMI about the importance of cultural monitoring. We have therefore concluded that the Regional Council should develop a cultural monitoring framework. Method 4-9, discussed later, has been inserted into 4.5 for that purpose.

However, the issue of whether or not the Regional Council requires an iwi strategy team is not one for this POP process to decide; that is a decision for the Council to make under the Local Government Act.

The submissions from Environmental Working Party and Ngā Pae o Rangitikei commented on tangata whenua participation in environmental management and creating partnerships. Because of the importance of these matters, we have concluded that wording should be added to 4.1.2 of the POP to include the concept of partnership and to advise that Policy 4-1 indicates how hapū and iwi involvement in resource management will be enabled.

Policy 4-1 sets out consultative mechanisms and procedures that the Council will adopt with hapū and iwi. We have decided that it is appropriate to make changes to Policy 4-1 to enhance and clarify those mechanisms and procedures. However, under s 36A of the RMA, resource consent applicants are under no duty to consult with any party, including hapū and iwi.

The POP is not the appropriate vehicle for dealing with transfers of power under s 33 of the RMA.

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<sup>9</sup> TAG, submission 395, reasons for Policy 4.2(a).

We have considered the contents of submissions and pre-hearing reports, but not POP consultative meetings. While copies of this decision will be provided to submitters, we will not be separately reporting back to individual submitters.

We have concluded that, with some changes, the anticipated environmental outcomes are appropriate; they are not limited to the number of environmental partnerships developed.

### **3.7.2 4.1.1 The Region's Hapū and Iwi**

As Muaūpoko is the spelling used by the iwi authority, we have changed the spelling in 4.1.1 of the POP. Subject to that, we have decided that 4.1.1 provides an appropriate listing of iwi whose rohe fall within the Region. As stated by Ms Marr<sup>10</sup>:

The purpose of this section is to inform the reader of the main iwi within the Horizons Region. It is for information purposes only and is not a definitive list of all the hapu and marae organisations that are within the Horizons Region, or who Horizons consults with in resource management processes. HRC are required to keep a record of each iwi authority, and any groups that represent hapu for the purposes of the RMA. Te Puni Kokiri provide some of this information to the regional council on their website Te Kāhui Māngai: Directory of Iwi and Māori Organisations, and this information includes mandated iwi authorities. None of the organisations identified in the submissions are identified by HRC or TPK records as being mandated iwi authorities, but some of them are identified in HRC records as being hapu and marae organisations which HRC will consult with on relevant resource management matters.

We therefore have decided that the listing of iwi in the POP is appropriate and that it would not be appropriate to add reference to the additional bodies sought by the submitters.

### **3.7.3 4.1.2 Hapū and Iwi Involvement in Resource Management**

As noted in section 3.7.1, we have concluded that:

- (a) it is appropriate to refer to the principles of the Treaty of Waitangi in 4.1.2; and
- (b) wording should be added to 4.1.2 to include the concept of partnership and to advise that Policy 4-1 indicates how hapū and iwi involvement in resource management will be enabled.

As explained later in section 3.7.22, as the defined term “tuna” was used only once in the POP, we have deleted the defined term “tuna” and added “eel species” here where “tuna” is referred to.

In response to submissions by Tuwharetoa Maori Trust Board in relation to 4.2, we decided it would be appropriate to insert reference to iwi management plans in 4.1.2 because of their relevance to hapū and iwi involvement in resource management.

### **3.7.4 4.1.3 An Understanding of Māori Values**

In various contexts, including as discussed in Part 2 (Overall Plan Hearing) of this Volume, a number of submitters raised issues about the use of terminology throughout the POP. In this chapter, there was inconsistency in

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<sup>10</sup> Marr, Planning Evidence and Recommendations Report, July 2008, pages 20-21.

the meaning of terms in 4.1.3, Table 4.1, 4.8 Glossary of Māori Terms, and the RMA.

The main Glossary states that a term defined in the RMA has that meaning. In 4.1.3, the term “tikanga” has been amended to “tikanga Māori” to be consistent with the RMA and 4.1.3 now explains that tikanga Māori and kaitiakitanga have the same meaning as in the RMA. Symbols to identify words defined in the RMA have been included in the objectives and policies in the chapter and in the relevant Glossary terms. This deals in part with the issue of identifying RMA terms raised by Horticulture NZ and Federated Farmers, dealt with in Part 2 Overall Plan Hearing.

To provide consistency, the defined terms have been clarified and inserted into the main POP Glossary (see section 3.7.22) and used in the chapter. To help the reader and to maintain consistency, the Glossary definitions of the terms “mauri”, “taonga”, “wāhi tapu” and “wāhi tūpuna” have been repeated in 4.1.3 to replace, or provide context for, different wording. The notified text in 4.1.3 can then usefully provide an expanded explanation of the terms and concepts.

We have concluded that it is not appropriate to add the list of reference texts sought by Environmental Working Party and Ngā Pae o Rangitikei as such a list may not be exhaustive or authoritative and may become dated over the life of the POP.

### **3.7.5 4.1.4 Environmental Issues of Concern to Hapū and Iwi and 4.2 Environmental Issues of Significance to Hapū and Iwi**

We deal first with issues raised by Tuwharetoa Maori Trust Board. We agree that it is beneficial to merge 4.1.4 and 4.2. This avoids overlap between the former separate sections and therefore improves clarity. However, we have decided that the topic warrants a separate section, so have merged them in 4.2 under the heading “Resource Management Issues of Significance to Hapū and Iwi”, rather than 4.1.4. Each heading under the former 4.1.4 (now in 4.2) has been labelled with a sequential issue number.

In terms of the submission about issue (j), we accept that there should be reference to traditional food gathering areas, native habitats and ecosystems as these are important resources for hapū and iwi. However, we have dealt with this in (ia), because the issue of adverse effects on wāhi tapu and the suggested insertion of wāhi tūpuna, which we accept as appropriate, should be dealt with separately in revised issue (j) given the elevated significance of those sites. The existing term “waahi tapu” should generally be amended to “wāhi tapu” and “wāhi tūpuna” throughout the chapter.

In relation to the issue of intellectual and cultural property rights, we have concluded that it is not appropriate for the POP to deal with this as it falls outside the ambit of the RMA. The new (o) and (p) issues suggested by Tuwharetoa Maori Trust Board are not needed, as the issues are already now sufficiently addressed by the other issues in the chapter.

Rather than adopting Tuwharetoa Maori Trust Board’s suggestion to include a list of iwi management plans in the POP, we have concluded that it is more

appropriate to include a list on the Regional Council's website as a list in the POP may become out of date. We have inserted reference to this in 4.1.2.

We have decided that a new issue titled "Monitoring and Enforcement" is required to identify the relevant matters raised by Environmental Working Party and Ngā Pae o Rangitikei, because of the importance of those matters. This now forms Issue 4-5.

In terms of the submission by Aohanga Incorporation, we have concluded that it is not necessary for the POP to specify who should be involved in selecting plants as this is a level of detail not appropriate for the POP.

We deal now with a number of matters raised by Mr Rudd. In order to meet differing expectations amongst iwi, Lake Horowhenua should be referred to as Punahau/Waipunahau in this chapter. The fact that the lake continues to suffer degradation should be identified as an issue because, as noted by Mr Rudd<sup>11</sup>, degradation of Lake Horowhenua has occurred and continues to occur. The location of landfills etc adjacent to water bodies raises issues of groundwater and surface water contamination but these issues are covered under existing issues (a), (b) and new (ia), so we have concluded that additional issues are not necessary. Excessive groundwater abstractions can affect water resources and existing users and so we have concluded that this matter should be listed as a separate new issue (ea).

In terms of issue (i), as discussed in Part 4 of this Volume, the concept of "farm plans" is to be broadened to encapsulate other forms of management plans for land. For consistency, we have revised (i) to refer to "land management plan".

The introduction of pests is an issue to be addressed under the Biosecurity Act and its management strategies, rather than the POP.

### **3.7.6 Objective - General and Objective 4-1 Environmental Management**

Consistent with legal advice and the modern approach to drafting, we have used "must" when an obligation is imposed.

Objective 4-1(a) embodies the enabling aspect of s 5 with regard to hapū and iwi. It is inappropriate to require the protection of the mauri of natural and physical resources as that is a high threshold which could potentially preclude any use or development of those resources, even that which has arguably only a minor adverse effect on mauri. In the Provisional Determination, we used the terminology "recognised and provided for". However, we have concluded that such terminology should be reserved for s 6 RMA matters that are explicitly referred to in s 6. For consistency in terminology across the POP, it is most appropriate to use the terminology "have regard to" in this objective. In addition to the methods in this chapter, the practical implementation of Objective 4-1(a) is explicitly addressed in other parts of the POP. Chapter 6 (Table 6.2) and Schedules AB (Surface Water Management Values) and H (Coastal Marine Area Activities and Water Management) identify mauri as one of the Values that applies to water bodies and their beds and the coastal marine area.

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<sup>11</sup> Rudd, submission 209, page 2.

In Objective 4-1(b), to maintain better consistency with the RMA, it is more appropriate:

- (a) to refer to an expanded list of places of significance to hapū and iwi (similar to that in s 6(e) of the RMA, but with reference to wāhi tūpuna being included) than to “ancestral taonga” and for the relationship to be “recognised and provided for”; and
- (b) to refer to “particular regard” being given to kaitiakitanga (similar to s 7(a)).

The range of matters referred to by Tuwharetoa Maori Trust Board is already encompassed in other provisions of the chapter and does not need to be repeated in the objective.

### 3.7.7 Policy 4-1 Hapū and Iwi Involvement in Resource Management

We agree with Ms Marr<sup>12</sup> that a way to provide relief to some submissions is to clarify, in the first part of Policy 4-1, the intention that the policy is about the relationship between the Regional Council and hapū and iwi. We also accept Mr Bowler’s suggestion<sup>13</sup> that the introductory words of Policy 4-1 should be that the Regional Council “enable and foster...” because that helps to convey the intention of the policy, which is enabling and fostering the relationship of hapū and iwi with the matters set out in s 6(e) of the RMA.

However, we have concluded that his suggestion to refer to “encouraging” increased involvement of hapū and iwi is not appropriate as they already wish to be involved. We do not accept the legal submission on behalf of Genesis that not including “encouraging” means that the Council is effectively committing to achieve the outcomes in (a) to (h).

We have also concluded that additional changes are needed to clarify the intent of the policy as explained by Ms Marr<sup>14</sup>, so we have made changes to Policy 4-1(a) to (f) to clarify the roles of the Regional Council, hapū and iwi, and others. As noted by Mr Schofield, “... this policy is about clarifying the relationship between Horizons Regional Council and iwi and hapu (as opposed to providing a steer to a resource user)”.<sup>15</sup>

We agree with Mars Petcare that it would be beneficial to recognise existing arrangements and agreements with hāpu and iwi. Such arrangements are often the result of extensive negotiations and represent a sunk cost to the parties involved. We have inserted a new Policy 4-1(aa) but concluded that it is appropriate to refer specifically to resource users and local authorities as well as hapū and iwi.

Similarly, we agree with Genesis that it is appropriate to amend Policy 4-1(e) to clarify that “joint management agreements” are between the Regional Council and hāpu and iwi, as is clear from the definition of that term in s 2 of the RMA.

In terms of Policy 4-1(f), a memorandum<sup>16</sup> was lodged setting out agreements reached between experts on behalf of the TA Collective and the Regional

<sup>12</sup> Marr, Planning Evidence and Recommendations Report, July 2008, page 59 section 4.9.2.

<sup>13</sup> Bowler, Statement of Evidence, July 2008, Table 1 page 2.

<sup>14</sup> Marr, Planning Evidence and Recommendations Report, July 2008, section 4.9.2.

<sup>15</sup> Schofield, Statement of Evidence, July 2008, page 3 para 3.4.

<sup>16</sup> Marr and Forrest, Memorandum, 4 August 2008.

Council. For the reasons set out in that memorandum, we accept their agreements. We have included a definition of “iwi management plan” that is consistent with ss 35A(1)(b), 61(2A)(a) and 66(2A)(a) of the RMA in the Glossary. There were no other outstanding issues from the perspective of the TA Collective.

It is not appropriate to refer to hapū management plans, as sought by Mr Rudd, as the RMA refers to planning documents recognised by an iwi authority.

Some submitters wanted the role of hapū and iwi in resource consent processes to be made clear and mentioned consultation issues. Under s 36A of the RMA, an applicant or the Regional Council has no duty to consult with hapū and iwi about a resource consent application. We agree with Tuwharetoa Maori Trust Board and Ms Marr that a policy to encourage consent applicants to consult with tangata whenua would be a useful addition to Policy 4.1. The statement of encouragement also clarifies that it is not a requirement. This is stated in a new policy provision (h) to encourage consultation, among other things, to identify the matters in s 6(e) of the RMA.

Tuwharetoa Maori Trust Board sought several other additional policy provisions. We have concluded that the matters raised are appropriately covered in the amended provisions of Policy 4-1, together with the amended methods of implementation for the chapter.

### **3.7.8 Policy 4-2 Wāhi Tapu, Wāhi Tūpuna and Other Sites of Significance**

Policy 4-2 as notified was potentially confusing and has been reordered.

Policy 4-2(a) refers to existing databases of sites of significance. These databases are informative for resource users. Policy 4-2(aa) now advises that the Regional Council will facilitate hapū and iwi recording the locations in an appropriate publicly-available database. In Policy 4-2(a), protection is too strong a term without qualification. We note Mr Bowler’s suggestion that an alternative is to refer to “appropriately managed to recognise and provide for”. However, in light of s 6(f) of the RMA, we have decided that the appropriate solution is to insert reference to “inappropriate” subdivision etc and we note that other submitters support this solution.

Policy 4-2(b) deals with records of sites that are confidential to hapū and iwi. Council should also assist with the compilation of these confidential databases as the information contained within them can be used by hapū and iwi to respond to queries from resource users. Policy 4-2(b)(i) was deleted because Method 4-4 provides for development of a code of practice to deal with procedures in the event of discoveries.

Policy 4-2(c), as amended, states the need for clear procedures in the event of wāhi tapu or wāhi tūpuna discoveries. The reference to developing a code of practice has been deleted as that is a method of achieving the policy, appropriately referred to in Method 4-4. The terminology in the policy now refers to “procedures” rather than “guidelines” to be consistent with the terminology in Method 4-4.

The reference to “and areas” sought by NKII would help to clarify the intended extent of Policy 4-2. As advised by Mr Black, “Ngati Kahungunu Iwi Incorporated seeks increased protection of areas where there are several contiguous sites of significance to our hapu, particularly waahi tapu and waahi tupuna, as well as extensive offshore reefs or shellfish beds of cultural significance.”<sup>17</sup> The issue of the narrowness or breadth of the meaning of “site” occurs not only in this policy and Chapter 4 but also in other chapters. There are also varying references in the POP to sites, areas, locations and places, which could usefully be made more consistent. Therefore, we have concluded that, rather than insert “and areas”, a preferable solution is to insert a definition in the Glossary of the POP that states “Site includes, where in the context it is appropriate, an area or place.” That is consistent with suggested wording provided by Mr Maassen in the hearing on Chapter 7 and historic heritage, and provides relief for NKII’s submission.

We have concluded that the existing reference to wāhi tapu and wāhi tūpuna and the amended definition of “site” are wide enough to encapsulate the matters sought by Mr Rudd, Environmental Working Party and Ngā Pae o Rangitikei. To the extent that these terms do not encapsulate the matters raised, we are of the opinion that they should not be referred to in the policy.

There is no need to refer to the fact that some proposals may benefit iwi as this part of the POP deals solely with the identification and protection of sites of significance to hapū and iwi.

The matter of separate approvals for site disturbance is better covered in Chapter 7, which identifies the policies relating to historic heritage.

### **3.7.9 Policy 4-3 Protection of Mauri of Waterbodies**

The term “waterbodies” has been amended to “water” throughout the chapter. The former term excludes the coastal marine area but, from the context of the POP, it is clear that Chapter 4, and Policy 4-3 in particular, are intended to apply to water issues in the coastal marine area.

The error in the reference to Policy 6-19 has been corrected and the reference to “low flow” has been amended to “minimum flow” to be consistent with Policy 6-19.

Rather than referring to the Regional Council “encouraging the implementation” as suggested by Genesis or “recognise and provide for” as submitted by Horticulture NZ, we have concluded that Policy 4-3(a) should provide that the Council must “have regard to” the mauri of water. This change will make this policy consistent with amendments made to Objective 4-1(a) and is for similar reasons.

Policy 4-3(b) deals with rāhui. We agree with Genesis that it is not the role of the Regional Council to implement rāhui and there is no basis in the RMA for mandatory cessation of an activity based on a rāhui.<sup>18</sup> We accept Ms Marr’s recommendation<sup>19</sup> that facilitating a voluntary rāhui would be more appropriate. Any rāhui should be based on the advice of hapū and iwi and we

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<sup>17</sup> NKII, Submissions to the Horizons One Plan Hearings, 8 August 2008, page 3 para 8.

<sup>18</sup> Bowler, Statement of Evidence, July 2008, page 6 Table 1.

<sup>19</sup> Marr, Supplementary Recommendations, 5 August 2008, page 5.

agree with Fonterra and WPI that it is appropriate that there be consultation with potentially affected resource users.

We understand from Mr Mr Schofield<sup>20</sup> that there is no need to cross-reference Chapter 3 as had initially been sought by TrustPower.

### **3.7.10 Policy 4-4 Other Environmental Issues and Table 4.1 Environmental Issues raised by Hapū and Iwi**

Table 4.1 repeats the issues listed in (now) 4.2 of the chapter (the left column of the Table), describes them in the context of tikanga Māori (middle column) and then identifies other provisions in the POP that address those issues (right column). Consequently, the wording of the issues in 4.2 has been duplicated in the left column of the Table.

Tuwharetoa Maori Trust Board requested that Table 4.1 be amended to include reference to the additional resource issues that it had sought. We have done that and have included a reference to the definition of wāhi tūpuna in the middle column of (j) of Table 4.1.

The concepts raised by Landlink are not appropriate for inclusion in the POP as they extend beyond the realm of similar concepts provided for in the RMA.

In (f), we agree with Genesis that the reference to the evidence in the Tongariro Power Development Scheme hearing should be removed as it is inappropriate in a policy document such as the POP. The differing views of hapū and iwi on the matter of water diversions to other catchments should be noted as should the fact that parties will need to seek the views of specific hapū or iwi if they wish to know their views on this matter. Mr Bowler's suggested text provided a useful basis for revised wording.

Issue 4-5 (and (o)) has been added to 4.2 to deal with the matter of monitoring and enforcement raised by Environmental Working Party and Ngā Pae o Rangitikei. Consequently, it is necessary to add this issue to Table 4.1 as (o).

### **3.7.11 4.5 Methods of Implementation - General**

For all the methods, we have changed "Project Name" to a numbered method, so each method can be more easily identified, and have deleted "Project" from the description of the method.

### **3.7.12 Method 4-1 - Memoranda of Partnership (MoP) and New Method 4-2 - Identification of Sites of Significance**

In terms of Method 4-1 and related to the earlier comments about use of terminology, the description should be amended to refer to a fuller list of sites of s 6(3) RMA significance and "protected" should be replaced with "recognised and provided for".

The submissions of the energy companies and that of TMI highlight the benefit of creating a separate method of implementation that deals solely with identification of sites of significance. We endorse the view of Mr Procter where he stated, " ... we also believe it is appropriate for Horizons to create a

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<sup>20</sup> Schofield, Statement of Evidence, 25 July 2008, page 7.

new project (table 1) in Chapter 4 - Methods of Implementation to support additional attempts to identify other ... sites of cultural [significance] ... This change will go some [way] to fulfil s 6(e) of the RMA (1991).<sup>21</sup>

We have therefore inserted a new Method 4-2 and deleted the latter part of the description for Method 4-1. This new method can then be tailored to implement the revised provisions of Policy 4-2 and the appropriate availability of information.

### **3.7.13 New Method 4-3 - Treaty of Waitangi - Claims**

The Taranaki/Whanganui Conservation Board and TMI submissions, summarised in Volume 2 under the method dealing with Joint Management Agreements, referred to the lack of “methods that relate to the Treaty of Waitangi claims process and recognising the settlement from those claims other than investigating options of the development of joint agreements”. They sought a change of wording in the Joint Management Agreements method. However, we have concluded that the issue is of sufficient importance that it would be beneficial to include a new Method 4-3 that sets out how the Council will work with hapū and iwi once they have settled their Treaty of Waitangi claims. We do not, however, agree that only iwi should be referred to because hapū could also have settled a claim.

We endorse the view expressed by Mr Procter where he stated “The third change or addition TMI would like to the One Plan is the closer working relationship of Horizons and iwi in a post Treaty of Waitangi settlement era. This may be new to Horizons but for ROM and TMI the addition ... will be an attempt for Horizons and Iwi to look forward to the future rather than trying to fix the mistakes of the past and possibly avoid future modern day treaty breaches as a result of difficulties between settlement legislation implementation and Horizons aspirations.”<sup>22</sup>

In his evidence, Mr Procter<sup>23</sup> provided suggested wording for such a method, which formed a useful basis for appropriate wording.

### **3.7.14 Method 4-4 - Code of Practice for Wāhi Tapu Protection and Discovery**

Consistent with earlier amendments made in response to submissions, reference should be made to wāhi tūpuna. The code is relevant to permitted activities as well as resource consents and this should be stated.

TMI and Taranaki/Whanganui Conservation Board identified the importance of consultation and development of practices on a case-by-case basis. It is important that the code recognise that different discovery procedures and practices may be desired by different hapū and iwi. These should be developed in consultation with hapū and iwi. However, the development of the code itself should include consultation with resource users, as they are potentially affected.

We have stated the target date for the production of the code and have removed the rest of the words as there is no need to specify the intended

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<sup>21</sup> Procter, Submission - One Plan (evidence), undated, paras 17 and 18.

<sup>22</sup> Ibid, para 21.

<sup>23</sup> Ibid, Table 3.

outcome in the target. The manner of distribution can be left for the Council to decide when the code is developed.

In terms of referring to the code of practice (COP) in rules, we accept Ms Marr's statement that "... the COP should be referenced in the relevant rules. However as the COP does not exist yet, it would not be appropriate to include that reference at this stage."<sup>24</sup>

### **3.7.15 Method 4-5 - Regional Iwi Environmental Projects**

We agree that the title of the method should be broadened to refer to projects in general. Consistent with our earlier conclusion about referring to hapū and iwi, the method should consequently be expanded to refer to projects initiated by hapū or iwi.

### **3.7.16 Method 4-6 - Iwi Management Plans (IMP)**

It is not appropriate to make provision for the recognition, inclusion or alteration of any rules in respect of any future iwi management plan. This method is simply intended to articulate the fact that the Regional Council will support the development of such plans.

Once such plans are produced, it is assumed that they will be referenced as appropriate under s 104(1)(c) of the RMA by resource consent decision-makers. They will also be taken into account, to the extent relevant, under ss 61(2A)(a) and 66(2A)(a) in preparing or changing a regional policy statement or regional plan (and s 74(2A)(a) in relation to a district plan, if the iwi management plan has been lodged with the relevant territorial authority).

We have clarified the wording in the target for this method.

### **3.7.17 Method 4-8 - Joint Management Agreements**

Section 36B(1)(b)(i) of the RMA identifies that a local authority may enter into a joint management agreement with an iwi authority or a group that represents hapū (among other groups). It is therefore appropriate to retain the reference to hapū in this method. It is not appropriate to use the term "will develop" instead of "investigate options for" as the Regional Council does not currently have any joint management agreements in place and so it is not able to say what form they will take or if they will be considered appropriate by any other party.

As already noted, the new Method 4-3 Treaty of Waitangi - Claims has been inserted to address the submissions of Taranaki/Whanganui Conservation Board and TMI.

### **3.7.18 New Method 4-9 - Cultural Monitoring Framework**

Ngāti Pareraukawa sought "the adoption of Māori values and indicators as a form of natural resource monitoring".<sup>25</sup>

We accept Mr Procter's statement<sup>26</sup> that iwi are presently seeking more involvement in monitoring and that, to fully recognise kaitiakitanga and the

<sup>24</sup> Marr, Planning Evidence and Recommendations Report, July 2008, page 92 section 4.15.2.

<sup>25</sup> Ngāti Pareraukawa, submission, page 4.

present day aspirations of iwi, monitoring needs to be more strongly emphasised.

In his evidence<sup>27</sup>, Mr Procter provided suggested wording for such a method which formed a useful basis for the new Method 4-9 that we have inserted.

### **3.7.19 Method 4-10 - Resource Consent Processes**

Consistent with the comments under the previous heading, we have concluded that it is appropriate to include provision for cultural monitoring requirements in this method.

### **3.7.20 4.6 Anticipated Environmental Results - Table**

In the first row, consequential amendments are required to the first column of the anticipated environmental results table to provide consistency with the earlier amendments made to Policy 4-2. Furthermore, the data source is incorrectly identified as the code of practice whereas the actual data source will be accidental wāhi tapu and wāhi tūpuna discoveries reported to the Regional Council or the Historic Places Trust. This has been corrected.

In the second and fourth rows, it is not appropriate to replace the term “environmental” with “partnership” as that would not adequately identify the context of the methods in this section, which are dealing with anticipated environmental results. We are satisfied that the wording adequately conveys hapū and iwi involvement.

In relation to the issue raised by TMI, we have concluded that it is not necessary to provide a wider range of indicators, because the existing indicators are wide enough to cover, for example, the number of GIS databases established.

### **3.7.21 4.7 Explanations and Principal Reasons**

The Explanations and Principal Reasons have been revised to include text that relates to Objective 4-1 to comply with s 62(1)(f) as the POP as notified only addressed the chapter’s policies.

Consequential revisions that relate to changes made to other provisions in the chapter have also been made.

### **3.7.22 4.8 Glossary of Māori Terms and New Terms**

Submitters raised the issue of the integration of matters in Chapter 4 with the rest of the POP. We have concluded that one way to help that integration is for the terms that need to be defined to be included in the main Glossary of the POP. We therefore accept Ms Marr’s recommendation<sup>28</sup> that the Glossary of Māori Terms should be removed from Chapter 4 and terms should be defined in the main Glossary if necessary. Terms defined in the main Glossary are identified by being italicised (as some defined terms are more than one word) and followed by an asterisk. These changes will also improve clarity within the POP.

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<sup>26</sup> Procter, Submission - One Plan (evidence), undated, para 25.

<sup>27</sup> Ibid, Table 4.

<sup>28</sup> Marr, End of Hearing Statement, undated, page 15.

A number of submitters, including in relation to Overall Plan issues dealt with in Part 2 of this Volume, referred to the need for greater focus on precise use of language in the POP.

A number of words in the Glossary of Māori Terms are either not used at all in English in either Chapter 4 or the POP<sup>29</sup> as a whole, are already defined or explained where they are used<sup>30</sup>, are used only in a particular context<sup>31</sup>, or have a clear meaning without the need for definition.<sup>32</sup> Consequently, a number of definitions have been removed.

Some words in the Glossary of Māori Terms are used only once in the English text of the POP.<sup>33</sup> In those cases, we concluded that it was more helpful for the reader and more consistent with the format of the POP for the definition to be inserted where the term is used rather than in the Glossary.

As noted earlier, there was inconsistency in the meaning of some terms in 4.1.3, Table 4.1, 4.8 Glossary of Māori Terms, and the RMA.

The objectives and policies in Chapter 4 and the Glossary terms now identify where a term defined in the RMA has been used, so terms defined in the RMA have been removed from the Glossary of Māori Terms. The definition of “tikanga Māori” has been removed from the Glossary to avoid confusion because that term is defined differently in the RMA. Because “kaitiakitanga” is defined in the RMA as including the ethic of stewardship, the different definition for “Kaitiakitanga/Stewardship” sought by the submitters would be confusing.

Different meanings for the terms “mana”, “mauri”, “taonga”, and “wāhi tapu” in the chapter have been resolved by revising the defined terms as explained below and using them more consistently.

The definition for “mana” in the Glossary of Māori Terms was different from the one in Table 4.1(e) and (ea) (“prestige”), so “prestige” has been added to the definition and removed from the table.

“Mauri” is not defined by the RMA. While we accept Ms Marr’s reference<sup>34</sup> to *Land Air Water Association v Waikato Regional Council* about the potential perils of defining Māori concepts in English, the term was defined in the Glossary of Māori Terms; further explanation of the concept is provided in 4.1.3 of the POP. We have not accepted the wording proposed by TAG and others, which was yet another different meaning. Ms Marr helpfully drew our attention to the definition in plans of other regional councils.<sup>35</sup> We have amended the Glossary definition to align better with that used by other regional councils, particularly the adjacent Taranaki Regional Council.

The definition of “taonga” from the Glossary of Māori Terms has been adopted and the different words in 4.1.3 have been deleted.

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<sup>29</sup> Iwi Māori, whakapapa.

<sup>30</sup> Harakeke, mahi tautara, urupa, waahi pakanga, wai tohi, manaaki, manuhiri.

<sup>31</sup> Awa in He Tini Awa Trust.

<sup>32</sup> Waitangi Tribunal.

<sup>33</sup> Tuna, wānanga.

<sup>34</sup> Marr, Planning Evidence and Recommendations Report, July 2008, pages 105-106 section 4.22.2.

<sup>35</sup> Marr, End of Hearing Statement, undated, page 14.

The definition of “wāhi tapu” has been amended. “Wāhi tapu” is now based on the definition in the Historic Places Trust Act 1993, but to avoid repeating “rua kōiwi” in the chapter, we have included it in the definition.

The definition of “wāhi tūpuna” has been amended by removing the reference to 4.1.3.

There were different meanings given for “whanau” in its definition in the Glossary of Māori Terms, in the definition of hapū in the Glossary of Māori Terms, and in 4.1.1 (where, as well having a different meaning, it also had a macron). We have retained the definition and used the defined term in place of inconsistent terminology elsewhere.

A definition is required for “rohe” and this has been included. The definition of “rua kōiwi” has been clarified.

As noted earlier, a definition for “iwi management plan” that is consistent with ss 35A(1)(b), 61(2A)(a) and 66(2A)(a) of the RMA, and a definition of “site”, have also been included.

### **3.8 Conclusion**

See Part 1 of this Volume.