



IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of Hearing of Submissions and Further
Submissions on the Proposed Central Hawke's
Bay District Plan Review

Eighteenth Memorandum and Direction of the Hearings Panel
DIRECTIONS REGARDING PROCESS FOR THE HEARING OF SUBMISSIONS ON TANGATA WHENUA
MATTERS

Purpose

- 1) The purpose of this minute is to provide submitters on particular matters relating to Hearing Stream 4, Tangata Whenua matters, with a further limited opportunity to respond to questions regarding either new or amended provisions in the Proposed District Plan as recommended by the reporting planner in the two s42A reports for the hearing, dated October 2022.
- 2) The hearing was the final of two convened to hear matters relating to tangata whenua provisions:
 - First hearing held on 11 August 2022, held to hear submissions on overarching matters and issues; and
 - Final hearing held on Monday 14 November 2022, following an informal Wānanga held on 5 and 6 September 2022.

Introduction

- 3) In our Minute #11, the Panel set out the proposed process for hearing of submissions relating to Tangata Whenua matters in the Proposed Central Hawke's Bay District Plan (PDP). In that Minute, it was noted:

The Panel observed during Hearing One that matters raised in the s42A reports relating to submissions by Tangata Whenua were broader than a single section of the PDP, and that their concerns were interrelated, making the hearing of all

Tangata Whenua matters across the PDP are complex. Given this, and following engagement between tangata whenua submitters and representatives of the Council, the Panel has determined that a bespoke hearing process for these matters is appropriate. As set out in further detail below, the intention is that the Tangata Whenua topic will follow a three-step process:

- 1) An initial hearing (in mid-August 2022) where overarching issues and key concerns will be discussed and clarification of matters to be addressed through wānanga;*
- 2) Wānanga to discuss and work through issues identified during the preliminary hearing; and*
- 3) A second hearing (in late 2022), where the outcomes of the wānanga will be presented and any unresolved issues can be addressed through evidence and presentations to the Panel.*

By adopting this process, the Panel's intention is that all submitters on this topic have the opportunity to speak to their submissions, but also to explore, in a collaborative manner, whether agreed solutions can be identified which will address the submitters' concerns, including through the District Plan or through other methods.

- 4) The Panel considered the overarching matters related to Tangata Whenua at an initial hearing on 11 August 2022. An independently facilitated wānanga was then held on 5-6 September 2022 for the submitters and Council advisers on the Tangata Whenua topic to discuss and work through those issues identified during the first hearing. Following the wānanga, a record of Statements of Agreement was filed, which included agreement that an amended Part 1 Introduction to the Tangata Whenua Chapter of the PDP would be drafted and confirmed by affected submitters.
- 5) The second and final hearing on Tangata Whenua matters was held on 14 November 2022. The intent of the second hearing was to focus upon key provisions of the PDP relating to tangata whenua matters. It did not address matters outside the District Plan raised in submissions or discussed at the wānanga.
- 6) During that second hearing, two matters were identified requiring action post hearing. They were:
 - i) To determine whether all marae identified in the Part 1 Introduction of the Tangata Whenua Chapter had confirmed their agreement to its recommended amended drafting, including the pepeha for the District's marae; and
 - ii) Following the presentation and in response to a request by Dianne Smith on behalf of Heretaunga Tamatea Settlement Trust (HTST), it would be desirable to receive responses to questions and confirmations that had been sought by planning report writers in their s42A reports.
- 7) With respect to point (i), we understand that Council staff are liaising with marae to provide comment or confirmation on the Part 1 Introduction.
- 8) With respect to point (ii), the reporting planner agreed to provide a list of the questions or confirmations identified in the relevant s42a reports for which a response from the relevant submitter(s) had been sought: that table is attached to this minute.
- 9) The Panel therefore directs that, by 25 November 2022:

- i) Council staff complete their engagement with marae with respect to Part 1 of the PDP; and
 - ii) That the submitters from whom feedback has been requested in the attached table provide final feedback should they wish to do so.
- 10) The Reporting Officer is then asked to provide their right-of-reply with respect to Tangata Whenua matters by 9 December 2022.
- 11) As stated in the hearing, the Panel will not accept further information or submissions on the Tangata Whenua topic after 25 November 2022.

Communications

- 12) As a reminder, the primary point of contact for all matters relating to the hearings is Jessie Williams, who can be contacted at districtplan@chbdc.govt.nz, or phone (06) 857 8060. The key location for up-to-date information on the hearings is the PDP Hearings Page is at <https://www.chbdc.govt.nz/services/district-plan/proposed-district-plan/hearings/>.

Dated 21 November 2022



Robert Schofield

Chair of the Central Hawke's Bay District Council District Plan Hearings Panel

Tangata Whenua S42A Report, Volume 1

Submission Point	Key Issue / S42A report page #	Decision sought	S42A recommended changes	Paragraph / Feedback requested
S134.001 Ngāti Kere Hapū Authority	Key Issue 1 – Mihi, Tangata Whenua Relationships and Representative Voices Page 19	Seeks that the listing of 'Ngā Reo o te Takiwa Representative Voices' be amended to include the Ngāti Kere Hapū Authority	<p>'Ngāti Kere Hapū Authority: representing coastal Māori communities made up of the Pōrangahau, the Pourērere and the Kairākau hapū communities.'</p> <p>Subsequently amended by the S42A reporting officer in updated provisions provide at the Hearing as follows:</p> <p>'Ngāti Kere Hapū Authority: tangata whenua in the Pōrangahau rohe'</p>	5.4.9 It would be helpful to the Hearings panel if Ngāti Kere Hapū Authority could provide feedback on this wording at the Hearing.
S122.002 Rongomaraeroa Marae Trustees	Key Issue 5 - Te Reo Terms, Glossary & Definitions Page 45	Correct use of Māori terms, including 'tapu', and oppose those used in the 'Glossary' where these are inaccurate or misused. As an example, they cite the term 'tapu' as a place sacred to Māori, and the community in the traditional, ritual, spiritual, religious and mythological sense. E.g. Taikura rock is well respected by Māori and the Porangahau community.	<p>Amend definition of 'Tapu' as follows:</p> <p><u>'a treasured place has the same meaning as in section 6 of the HNZPTA 2014 (as set out below) means a place sacred to Māori in the traditional, spiritual, religious, ritual, or mythological sense.'</u></p>	9.4.13 The term 'Tapu' has not been used in the PDP as an independent term but is generally used when referring to 'wāhi tapu' which is translated in the PDP Glossary as 'a treasured place'. It would be helpful if Rongomaraeroa Marae Trustees could clarify at the hearing if they are seeking a new term in the PDP for defining 'tapu' or if the interpretation they have provided relates to the PDP definition of 'wāhi tapu'.
S125.003 Ngā hapū me ngā marae o Tamatea Supported in further submission by Heretaunga Tamatea Settlement Trust (FS13.004)	Key Issue 5 – Te Reo Terms, Glossary & Definitions Pages 46-47	Seeks inclusion of a new definition for 'Māori Land' in the 'Glossary'. In their view, the definition should be that used in Te Ture Whenua Māori Act 1993 or such other definition that accurately describes Māori land.	<p>The Te Ture Whenua Māori Act 1993 defines māori land as follows:</p> <p>'means Māori customary land and Māori freehold land'</p> <p>I consider that given the term 'Māori land' as used in the PDP, clearly intends to relate land that comes within the Te Ture Whenua Māori Act 1993, it would</p>	9.4.26 It would be helpful to the Hearings Panel if submitters could provide their feedback on the above as an alternative definition of Māori Land

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			<p>be appropriate to include a new definition and wording as follows:</p> <p><u>'has the same meaning as in section 4 of the Te Ture Whenua Act (as set out below):</u></p> <p><u>means Māori customary land and Māori freehold land.'</u></p> <p>Alternatively I note the recently released National Policy Statement for Highly Productive Land (NPS HPL) provides the following definition of 'specified Māori land':</p> <ul style="list-style-type: none"> a) <i>Māori customary land or Māori freehold land (as defined in Te Ture Whenua Māori Act 1993);</i> b) <i>land vested in the Māori Trustee that—</i> <ul style="list-style-type: none"> (i) <i>is constituted as a Māori reserve by or under the Māori Reserved Land Act 1955; and</i> (ii) <i>remains subject to that Act;</i> c) <i>land set apart as a Māori reservation under Part 17 of Te Ture Whenua Māori Act 1993 or its predecessor, the Māori Affairs Act 1953;</i> d) e) ... f) <i>land held by or on behalf of an iwi or hapū if the land was transferred from the Crown, a Crown body, or a local authority with the intention of</i> 	

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			<i>returning the land to the holders of the mana whenua over the land</i>	
S122.004 Rongomaraeroa Marae Trustees	Key Issue 6 – General Matters & Te Tiriti o Waitangi Provisions Pages 51 and 52	Seeks amendments to the Tangata Whenua provisions as outlined in the detail of their submission. They acknowledge that <i>'the Plan has many positive changes, then negative, and so commend the Council on their continued efforts. Authentic engagement built on Māori values kia whai kiko ai ngā kōrero e takoto ana, to give substance to what is proposed and to fulfil the obligations of the Treaty of Waitangi.'</i> Their reasons for their proposed amendments are based on the lack of engagement with Tangata Whenua. Relief has been sought on specific provisions to the PDP which are addressed under separate submissions.	No specific changes recommended directly in response to this report however, numerous changes have been made in response to their other points (refer amended provisions)	10.4.2 I acknowledge Rongomaraeroa Marae Trustees submission point that the PDP has not reflected Ngāti Kere's role in Tamatea, or the fact that Rongomaraeroa is the oldest operating Marae in Tamatea. I note this matter is being addressed in response to submission point S134.001 (Key Issue 1) above, as well as through the review of Part 1 Tangata whenua provisions by tangata whenua submitters. It would be helpful if Rongomaraeroa could provide feedback to the Hearings Panel on any recommended changes.
S122.005 Rongomaraeroa Marae Trustees Supported in further submission by Heretaunga Tamatea Settlement Trust (FS13.006) and Ngā hapū me ngā marae o Tamatea (FS5.023)	Key Issue 6 - General Matters & Te Tiriti o Waitangi Provisions Pages 53 -55 (paragraphs 10.4.12 - 10.4.19)	Opposes those provisions in the Tangata Whenua sections of the PDP that reference the Treaty of Waitangi and seek that they be moved to their own section of the PDP. Their reasons are that Te Tiriti of Waitangi is not part of Māori whakapapa as treaties are a European paradigm.	Refer recommended amendments in Part O1D	10.4.8 It would be helpful to the Hearings Panel if the submitters to these provisions could provide their feedback on the proposed amendments at the Hearing. 10.4.14 I note Rongomaraeroa Marae Trustees submission point that Te Tiriti of Waitangi is not part of Māori whakapapa, as treaties are a European paradigm, and their request that references to the Treaty of Waitangi be moved to its own section. I am unsure if they are seeking a deletion to any reference to the Treaty in the

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				<p>'Introduction' sections, or that they be completely separated under a new heading. It would be helpful if Rongomaraeroa Marae Trustees could clarify this at the Hearing. In the interim I propose a heading be inserted as set out below:</p> <p>Refer recommended amendments in Part O1D.</p>
S125.017 Ngā hapū me ngā marae o Tamatea	Key Issue 7 – TW Ngā Take: Issues (not already addressed) Page 60	<p>Seeks the Ngā Take: Issues be amended to include the following text (or alternative wording to similar effect):</p> <p>TW-IX The loss of mauri particularly in relation to fresh and coastal waters.</p> <p>TW-IX The continuing loss of quality, quantity, and access to mahinga kai and natural resources for customary use.'</p>	<p>In summary, and taking into account my recommendations in Key Issue 3 above, I support amending PDP Issues TW-I1 and TW-I2 as follows:</p> <p>The loss of mauri and te mana o te wai particularly in relation to fresh and coastal waters including the modification and degradation of lakes, rivers, springs and wetlands and traditional food gathering places (mahinga kai) that are central to the well-being of the hapū of Heretaunga Tamatea.</p> <p>The continuing loss of quality, quantity, and access to mahinga kai and natural resources for customary use The modification and degradation of the environment due to the introduction of weeds and pests, farm run-off, industrial pollution, and drainage works that have severely damaged traditional food sources and mahinga kai.</p> <p>It may not be appropriate or necessary to reference both the mauri and te mana o te wai of fresh and coastal waters, and it would be helpful if Ngā</p>	<p>11.4.9 It may may not be appropriate or necessary to reference both the mauri and te mana o te wai of fresh and coastal waters, and it would be helpful if Ngā hapū me ngā marae o Tamatea could provide their feedback on these recommended amendments to the Hearings Panel.</p> <p>Commented [SM1]: Note: Suggestion from Cr Lovell is to flip these terms around, ie 'The loss of te mana o te wai and mauri...."</p>

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			hapū me ngā marae o Tamatea and Heretaunga Tamatea Settlement Trust could provide their feedback on these recommended amendments to the Hearings Panel	
S125.019 Ngā hapū me ngā marae o Tamatea	Key Issue 8 - TW Objectives (not already addressed) Page 66	Retain TW-O2, but with the following amendments (or words to similar effect): 'Enable the active participation of Tangata Whenua/<u>mana whenua are actively involved</u> in all aspects of the implementation of the Central Hawke's Bay District Plan <u>including decision-making processes.</u>'	Taking all these matters into account, I would support amendment to Objective TW-O2, and suggest the following wording that may address all submitters concerns: TW-O2 <u>Enable the active participation of Tangata whenua <u>are actively involved</u> in all aspects of the implementation of the Central Hawke's Bay District Plan <u>that affect their relationship with their culture and traditions, ancestral lands, water, sites, wāhi tapu and other taonga.</u></u>	12.4.15 It would be helpful if Ngā hapū me ngā marae o Tamatea, Federated Farmers and Kāinga Ora could provide their feedback on this proposed alternative wording to the Hearings Panel.
S125.025 Ngā hapū me ngā marae o Tamatea	Key Issue 9 - TW Policies (not already addressed) Page 72	Retain TW-P5, but with the following amendments (or words to similar effect): TW-P5 To recognise and provide for development of, and a range of activities on, Māori Land and Whenua Māori to meet the needs and aspirations of tangata whenua like papakāinga housing, kaumātua flats and marae-based development, while ensuring that actual or potentially adverse effects of activities are avoided, remedied, or mitigated	TW-P5 To actively recognise, support and provide for development of papakāinga housing, kaumātua flats and marae-based development, and a range of activities on, Māori Land and Whenua Māori to meet the needs and aspirations of tangata whenua, while ensuring that actual or potentially adverse effects of activities are avoided, remedied, or mitigated.	13.4.16 It would be helpful if the submitters could provide their feedback on the recommended wording to the Hearings Panel.
S120.013 Heretaunga Tamatea Settlement Trust	Key Issue 9 - TW Policies (not already addressed) Page 72	Amend TW- P5 as follows: TW-P5 To recognise actively promote and enhance and provide for development of, and a range of	As above	As above

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		activities on, Māori Land to meet the needs and aspirations of tangata whenua while ensuring that actual or potentially adverse effects of activities are avoided, remedied, or mitigated		
S125.033 Ngā hapū me ngā marae o Tamatea	Key Issue 10 – TW Methods (not already addressed) & Principal Reasons Pages 77-78	Retain TW – M1 as notified	<p>Acknowledging that I am not a cultural expert, I agree that the use of both terms in Method TW-M1 is confusing and taking into account the approach outlined in Section 3.3 I therefore recommend these provisions be amended to use the term Tangata Whenua.</p> <p>TW-M1 Tūhono mai Tūhono atū Te Taiwhenua o Tamatea and the Council have an active and ongoing relationship to advance areas of mutual interest. This is evident by the first Māori Engagement Strategy ('Tūhono mai Tūhono atū'), adopted in August 2020 by the Central Hawke's Bay District Council. Tūhono mai Tūhono atū, developed with the support of Te Taiwhenua o Tamatea, recognizes the special status of Tangata Whenua / Mana Whenua and takes into account the Te Tiriti o Waitangi in resource management making processes as well as increasing cultural capacity and capability of Council to effectively engage with Tangata Whenua. Mana Whenua. ...</p>	<p>14.4.4 It would be helpful to the Panel if Rongomaraeroa Marae and Ngā hapū me ngā marae o Tamatea could provide their feedback on this proposed amendment.</p>

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S125.034 Ngā hapū me ngā marae o Tamatea	Key Issue 10 – TW Methods (not already addressed) & Principal Reasons Page 78	Seeks Method TW – M2 be amended to include overlay areas and statutory acknowledgements from other applicable Treaty Settlements.		14.4.7 I am not aware of any other Statutory Acknowledgement Areas that apply within the CHB district, and it would be helpful to the Hearings Panel if Ngā hapū me ngā marae o Tamatea could advise of additional relevant settlement legislation that should be included in the PDP.
S84.021 Kairakau Lands Trust Supported in further submission by Ngā hapū me ngā marae o Tamatea (FS5.029)	Key Issue 10 – TW Methods (not already addressed) & Principal Reasons Page 79	Amend 'TW - Principal Reasons' to include consideration of other options and processes to ensure the protection of sites of significance to Māori, beyond just identifying sites in the Plan	<p>Kairakau Lands Trust highlights some of the challenges for tangata whenua in identifying sites of cultural significance, and requests this be reflected in the 'Principal Reasons' section. I agree that it is important for Council to develop strong relationships with tangata whenua for this purpose so that appropriate methods of protection including those beyond the PDP, can be considered.</p> <p>I therefore would support an amendment to the TW Principal Reasons to reflect this, and propose the following amendment:</p> <p>Principal Reasons</p> <p>The principal reasons for adopting the policies and methods:</p> <p>Wāhi tapu, wāhi taonga or sites of significance that have been notified to the Council, are identified in SASM-SCHED3 and shown on the Planning Maps. This enables the Council to quickly and easily identify where there are wāhi tapu, wāhi taonga and sites of significance on land which may be affected by proposed activities, and when there is a need to notify tangata</p>	14.4.22 It would be helpful if Kairakau Lands Trust and Ngā hapū me ngā marae o Tamatea could provide their feedback on the above amendment to the Hearings Panel.

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			<p>whenua. It is acknowledged that additional work by Council in partnership with tangata whenua is required to further develop this list and further that tangata whenua will not always identify all sites for cultural reasons. <u>When considering the protection of sites of cultural significance many factors need to be considered, such as cultural values, intellectual property and capacity, and a range of options for protection needs to be considered. To achieve this a strong partnership underpinned by strong communication and commitment between Council and tangata whenua is essential.</u></p>	

Tangata Whenua S42A Report, Volume 2

Submission Point	Key Issue / S42A report page #	Decision sought	S42A recommended changes	Paragraph / Feedback requested
S125.049 Ngā hapū me ngā marae o Tamatea	Key Issue – Pages 26-27	<p>Seeks a full redraft of this section and amendments to include the following:</p> <ul style="list-style-type: none"> • <u>The proposed activity should be designed in partnership and consultation with mana whenua.</u> • <u>The proposed activity should be designed to avoid all known places and areas of significance to Māori where possible by encouraging consideration of alternative development locations and including the provision of protective buffer areas.</u> • <u>The proposed activity should be subject to a Māori values assessment or cultural impact assessment.</u> • <u>The proposed activity should mitigate or remedy any damage to any significant sites that have been damaged from past earthworks, construction of structures and buildings or erosion.</u> • <u>The proposed activity should achieve positive heritage outcomes and provisions including the use of a covenant to protect significant places and areas.</u> 	Refer para 4.4.3 in Section 42A report	<p>4.4.4 Based on this submission I would also support an additional clause in this Assessment Matter to reinforce the importance of undertaking cultural impact assessment when proposing works that affect such sites as set out in clause 7 above. It would be helpful to the Hearings Panel if Ngā hapū me ngā marae o Tamatea could provide their feedback on this approach.</p>
S121.170 Federated Farmers	Key Issue 14 – SASM Assessment Matters, Methods, Reasons and Results	Seeks the following to new method: SASM-MX Support landowners to manage, maintain and preserve sites	SASM-M7 Education, Advocacy, Facilitation	5.4.17 It would be helpful to the Hearings Panel if Federated Farmers and further submitters HNZPT, Ngā

Submission Point	Key Issue / S42A report page #	Decision sought	S42A recommended changes	Paragraph / Feedback requested
Supported by further submitters Ngā hapū me ngā marae o Tamatea (FS5.041) and hort NZ (FS17.42)	Pages 35-36	<p><u>and areas of significance to Māori, including by:</u></p> <ol style="list-style-type: none"> <u>1. increasing awareness, understanding and appreciation within the local community of the presence of and importance of identified sites and areas of significance to Māori;</u> <u>2. encouraging landowners to engage with local tangata whenua and/or marae and develop positive working relationships in respect of the ongoing management and/or protection of sites or areas of significance to Māori;</u> <u>3. providing assistance to landowners to preserve, maintain and enhance sites and areas of significance to Māori;</u> <u>4. Waiving consent and processing fees.'</u> 	<p><u>1. The Council will continue to develop information for landowners and the public to increase awareness, understanding and appreciation within the local community of the presence and importance of sites and areas of significance to Māori.</u> <u>Information will include for example identifying likely places of location, the process of consultation, and steps landowners can take to avoid, or minimise the impact of Wāhi Tapu, Wāhi Taonga and sites of significance on their land.</u></p> <p><u>2. The Council will encourage landowners to engage with local tangata whenua, hapū and/or marae to develop positive working relationships in respect of the ongoing management and/or protection of sites or areas of significance to Māori.</u></p>	<p>hapū me ngā marae o Tamatea and Hort NZ could provide their feedback on the recommended wording at the hearing.</p>
Supported by further submitters Ngā hapū me ngā marae o Tamatea (FS5.041)				
S134.006 Ngāti Kere Hapū Authority	Key Issue 16 – PKH General Matters P59	We recommend that the Proposed Plan states a commitment to promoting housing opportunities for hapū members across all classes of land.	<p>I therefore would support an amendment to the PKH - Methods that acknowledges this as follows: ...</p> <p>PKH- M7 Housing-Strategic-Framework 2019-2029</p> <p>x. <u>Central Hawke's Bay Housing Strategic Framework supports the community to Thrive through access to a home - He āhuru mōwai, e taurikura ai te hāpori', through five key goal areas:</u></p> <ul style="list-style-type: none"> -Social housing leadership - Working together to improve housing - Provide access to suitable housing - Retirement housing is provided in the most efficient and effective way 	<p>7.4.10 It would be helpful for this submitter to provide feedback to the Hearings Panel on these recommended amendments at the hearing.</p>