

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of hearing submissions and further submissions on the Proposed Waikato District Plan

AND

IN THE MATTER of matters arising at the hearing of submissions on Chapter 2 – Tangata Whenua

MINUTE AND DIRECTIONS FROM HEARING COMMISSIONERS

20 November 2019

Introduction

1. Hearing 4 of submissions and further submissions on the proposed Waikato District Plan (“**proposed plan**”) was held on 18 November 2019 and addressed “Chapter 2 – Tangata Whenua” of the proposed plan and associated matters.
2. Submitters who presented evidence and/or submissions at Hearing 4 were:
 - **Waikato-Tainui**¹ - represented by Ms Wikaira (legal counsel), Mr Donald (consultant planner), Ms Tukere (Waikato-Tainui’s General Manager Oranga) and Ms Raumati (a Trustee of the Turangawaewae Marae Trust Board).
 - **Heritage New Zealand** – represented by Ms McAlley, who produced written planning evidence.
 - **Tainui-o-Tainui** (which represents 12 hapu from the wider Whaingaroa / Raglan area) - represented by Ms Greensill.
 - **Whenua Holdings Waikato Limited** – represented by Mr Moanaroa. Although Mr Moanaroa provided a general overview of his company’s submission, he stated that he “was in the wrong hearing”, as his submission related to a rezoning request.

¹ Endorsed by Turangawaewae Marae Trust Board and Jackie Collier

3. Written statements from **Tata Valley Limited** and **Waikato Regional Council** were also tabled.
4. The Waikato District Council's ("**District Council**") section 42A report and the evidence and legal submissions of Waikato-Tainui, both suggested that some further discussions between submitters and Council staff would be beneficial in further developing the details of Chapter 2 and its relationship with the other chapters of the proposed plan.
5. Once we had heard all the evidence and submissions, we asked those present at the hearing to consider how further discussions could best be progressed.
6. The Minute set out below addresses the substance and eventual outcomes of those discussions and is followed by our Directions regarding their implementation.

Minute

7. In response to questions from the Hearings Panel, Ms Parham, counsel for the District Council, stated that she had had some preliminary discussions with Ms Wikaira (counsel for Waikato-Tainui), and suggested that a process along the following lines would be appropriate:
 - a. All submitters and further submitters on Chapter 2, and District Council staff, should be invited to a workshop session to discuss the possible scope of a revised Chapter 2. Ms Parham noted that involving all the parties involved was important, given that some 61 submissions supported the notified version of Chapter 2);
 - b. The workshop would best be facilitated by a person/persons with specialised knowledge of both plan drafting and Matauranga Maori;
 - c. The intended outcomes of that first workshop would be to agree the key principles that a revised Chapter 2 should address and to appoint several well-experienced submitter representatives to work with District Council staff to produce a redrafted version of Chapter 2;
 - d. That a redrafted version of Chapter 2 would be provided to all submitters and further submitters, who would also be invited to a second facilitated workshop to discuss its content and agree any necessary changes; and
 - e. A final revised version of Chapter 2 would then be provided to the Hearings Panel for its consideration.
8. All submitter representatives at the hearing endorsed that approach, as did the Hearings Panel.
9. In respect of timing, following input from all parties present, Ms Parham, Ms Wikaira and Ms Greensill proposed that the first workshop should occur as soon as was realistically achievable, preferably before Christmas, but no later than the end of February 2020. The Hearings Panel agreed.
10. The Hearings Panel advised that the process set out in paragraph 7 above, would need to be completed by the end of June 2020, in order to have it completed before the hearings on other related chapters of the proposed plan are scheduled to commence. Ms Parham, Ms Wikaira and Ms Greensill agreed.

11. Having now heard all the evidence and submissions, the Chair asked the parties present if there would be merit in the Hearings Panel giving some preliminary verbal feedback on how it considered Chapter 2 could potentially be structured, and whether there might be merit in Panel members facilitating the workshops referred to in paragraph 7 above.
12. The Chair stressed that:
 - a. The Panel had not formed any definitive views on the content or structure of Chapter 2, and that any feedback provided would be preliminary in nature, and provided solely for the purpose of assisting the parties in their discussions; and
 - b. Any participation by the Panel in the workshop process:
 - i. Was merely a suggestion, aimed at ensuring that an efficient and robust process was followed; and
 - ii. Would need to be supported by all submitters and further submitters on Chapter 2 of the proposed plan and by the Council.
13. All parties present at the hearing advised that preliminary verbal feedback from the Panel would be appreciated and of assistance.
14. Regarding Panel members' facilitation of the workshop process, the Chair advised that if it were to occur, the Panel had determined that himself, Mr Cooney and Ms Te Aho would be involved. The parties stated that they supported such a proposal, with Ms Wikaira advising she would need to obtain instructions on the matter and would advise the Hearings Administrator, via email, as soon as possible. She subsequently confirmed that Waikato-Tainui was comfortable with that approach.
15. Following an adjournment, and having first reinforced the matters set out in paragraph 12 a. above, the Chair provided the following preliminary feedback to the parties on behalf of the Panel:
 - a. It would be appropriate for Chapter 2 to include high level objectives/policy direction that recognised the importance of the "Vision and Strategy for the Waikato River" – Te Ture Whaimana;
 - b. Because the Vision and Strategy applied to the Waikato River catchment, rather than the Waikato District as a whole, that geographical distinction would need to be recognised in Chapter 2;
 - c. Regarding **Maori Freehold Land and Maori Customary Land** (both as defined in section 129 of the Te Ture Whenua Maori Act 1993), the Panel anticipated that Chapter 2 would:
 - i. Explicitly recognise the importance of tangata whenua being able to live on, and connect with, such land;
 - ii. Facilitate the development and use of such land, primarily for papakāinga and marae, while also making appropriate provision for associated activities that provided social and/or cultural and/or economic benefits to the landowners;

- iii. Include objectives, policies and rules in respect of Maori Freehold Land and Maori Customary Land, noting that the rules may or may not be located in Chapter 2;
 - iv. If it was considered appropriate, provide for the above as an “Maori Purpose overlay” (or similar) rather than a “zone”, given that if zoning were to be used, each land parcel would need to be individually identified, and because a plan change would be required if additional land were ever to become Maori Freehold Land and Maori Customary Land; and
 - v. Clarify the relationship between the provisions relating to Maori Freehold Land and Maori Customary Land and land that is identified in other chapters in the proposed plan as requiring some form of protection for environmental reasons, and whether/the extent to which any particular provisions would have primacy.
- d. Notwithstanding paragraph 15 c. above, the unique nature and significance of the land at Hopuhopu, mean that it could well be amenable to a “zoning” approach.
- e. Regarding **Treaty Settlement Land**, the Panel anticipated that Chapter 2 would probably need to take a different approach from that for Maori Freehold Land and Maori Customary Land. In that regard, a “one size fits all” approach could well be problematic because such land will likely address both cultural and commercial redress and therefore comprise a wide variety of existing land uses in a wide variety of environmental settings. Additionally:
- i. Not all such land can be easily identified, and in any event, the portfolio would likely change over time;
 - ii. Land zoned for other uses will likely become Treaty Settlement Land in the future as claims progress / rights of first refusal are exercised; and
 - iii. Land that became Treaty Settlement Land may be on-sold to others for commercial reasons.
- f. Given the matters summarised in paragraph 15 e. above, it may be that a “Treaty Settlement Land overlay” (or similar) that creates an objectives and policies framework, but no rules, could be included in Chapter 2 - that framework could recognise the use and development of such land, but within appropriate constraints to protect the natural and physical environment;
- g. Because Treaty Settlement Land may well include land in general title, care would need to be taken to ensure that if, for example, commercial land was on-sold to a third-party commercial entity, the Treaty Settlement Land provisions would then cease to apply;
- h. Chapter 2 would need to make clear the extent to which / how Maturanga Maori would be applied to, and integrate with, the district plan as a whole; and
- i. It would be important that all key terms used in Chapter 2 are precisely defined, so as to avoid ambiguity and/or confusion in the future, one particular example being “Treaty Settlement Land”.

Directions

16. Given all the above, we direct as follows regarding the procedure to be followed from here:
- a. The Hearings Administrator is to provide these Directions to all parties who lodged submissions or further submissions on Chapter 2 **as soon as possible** and post them on the District Council's website.
 - b. If any submitter or further submitter objects to Commissioners Mitchell, Cooney and Te Aho facilitating the workshops referred to in paragraph 7 above, they are to advise the Hearings Administrator, Ms Sandra Kelly, in writing, **no later than 5 pm on Wednesday 27 November 2019**, either by email or in hard copy at the following addresses:

Email Districtplan@waidc.govt.nz

or

Hard copy

Either

Mailed to: The District Plan Hearings Administrator
Waikato District Council
Private Bag 544
Ngaruawahia 3742

Attention: Sandra Kelly

or

Delivered to: The District Plan Hearings Administrator
Waikato District Council
15 Galileo Street
Ngaruawahia 3720

Attention: Sandra Kelly.
 - c. Any submitter or further submitter who intends to participate in the workshop referred to in paragraph 7 a. above, is to advise Ms Kelly, in writing, **no later than 5 pm on Wednesday 27 November 2019**. Any submitter or further submitter wishing to participate will need to have some flexibility as to their availability to attend the first workshop and accept that it may not be possible to set a time that suits every individual.
 - d. **As soon as possible after receiving replies** in accordance with paragraph 16 c. above, the District Council is to liaise with all those submitters and further submitters and arrange for the first facilitated workshop referred to in paragraph 7 a. above. This is to occur as soon as possible, but no later than 28 February 2020.
17. Further Directions will be issued following receipt of any written advice received in respect of paragraph 16 b. above and following the completion of the first facilitated workshop, or as otherwise considered necessary by the Commissioners.

18. For the avoidance of doubt, the Panel has made no Directions as to the land at Hopuhopu, as this will be a matter for the parties to consider further, and seek specific Directions from the Panel, if, and when considered necessary.

Questions Arising from These Directions

19. Any person who is uncertain about any matters addressed in these Directions, is encouraged to contact the Hearings Administrator.



P H Mitchell (Chair)

20 November 2019