

## MEMORANDUM

To: Commissioner Mr Alan Withy  
From: Kaylee Kolkman  
Date: 30 November 2023  
Subject: SL2100055 Onoke Heights Limited

### 1. The Request

The Independent Hearing Commissioner seeks further information in relation to the joint application heard on 14 and 15<sup>th</sup> November 2023 for the combined landuse and subdivision application SL2100055 for Onoke Heights Limited. The Commissioner sought this information via Minute 4 dated 15 November 2023 (“the Minute”).

### 2. Details Requested - Sites of Significance, Whangārei District - Rural and Urban & Services Plan Changes and Other Significant Policy Direction

The following points were sought as part of this minute:

#### i. *Sites of Significance*

*Council is to provide a statement on the process it has been undertaking since the 1997 Environment Court Plan Change 88 Decision related to sites of significance. Council is to include a copy of the Ngararatunua Consent Order as part of the information. A timeline and summary of the work undertaken is required.*

#### ii *Rural, and Urban and Services Plan Changes*

*Council is to provide a statement on the process undertaken with the above plan changes particularly documenting the engagement with Mana Whenua in relation to the application site. Inclusion of a timeline and summary of consultation is required.*

#### iii *In addition to items (i) and (ii) Council is requested to provide information of any significant policy decision that may have referenced the Application Site.*

Please refer to the attached Memorandum from the Whangārei District Council Policy Team which sets out the timeline that describes:

- the process leading up to and following the Environment Court Plan Change 88 Decision related to sites of significance; and
- the processes undertaken with the Rural and Urban and Services Plan Changes, with a particular focus on engagement with Mana Whenua.

It has been considered that the provision of a timeline that transverses each of the above three points provides a method of provision of the requested information.

3. Onsite Engineering meeting

Point (iv) of the requests in the Minute require an onsite engineering meeting.

A mutually agreeable time was scheduled for an onsite meeting to be held with the submitter Mr Duncan Scott at his property at 45 Dip Road, Kamo. The meeting was held on 22 November commencing at 9.30am. Present at the meeting was Mr Scott, Council's Team Leader Development Engineering Ms Nadia de la Guerre, the applicant's development engineering specialists, Mr Aaron Holland from LDE and Mr Dayle Widdup from Project Civil.

Mr Scott outlined his concerns regarding the potential effects of the proposal on his property at 45 Dip Road. The discussion was then focussed on the flooding concern raised. Mr Scott relayed that the culvert is too small for the development in his opinion. The engineering specialists concurred that the flooding concern raised relates to an existing situation. The engineering specialists agreed that there is a flooding issue however this is a separate issue which is not impacted upon by the proposal. The concern is acknowledged and will be addressed in a separate method by Council.

The engineering specialists have confirmed that there is no additional consideration required of effects on this property in terms of flooding. The proposal if approved would be required to meet the Council's Environmental Engineering Standards which provide for the protection of people and the environment from effects such as flooding.

6. Translation.

Point (v) of the Minute sought:

*Council is to provide and circulate an appropriate transcript of the Evidence presented by Mana Whenua representatives on Day 1 of the Hearing. The notes taken by Mr Mark Scott cultural advisor to the Commissioner, are also to be provided.*

Nga Mahinga Ngati Kahu o Torongare provided an overview transcript which was circulated to all parties on 15 November 2023. It is noted that a complete recording of the Hearing is saved on Council electronic record system Kete. The notes taken by Mr Scott were forwarded to the Commissioner on 15 November 2023.



Kaylee Kolkman

Team Leader RMA Consents

30 November 2023

Attachment: Whangārei District Council Policy Team Memorandum dated 30 November 2023, 'District Plan Making History as relevant to Onoke Block – 1994 to Present'.

## Memorandum

To Yvonne Masefield – Manager, District Plan  
From Stephanie Opai - Support Assistant, District Plan  
Subject District Plan Making History as relevant to Onoke Block - 1994 to Present  
Date 29 November 2023

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### 1. Introduction

This memo provides a summary of District Plan making history to address the following clarification sought by the hearing commissioner in relation to resource consent application SL2100055 (Onoke Heights Limited):

#### ***“Sites of Significance”***

- i. Council is to provide a statement on the process it has been undertaking since the 1997 Environment Court Plan Change 88 Decision related to sites of significance. Council is to include a copy of the Ngararatunua Consent Order as part of the information. A timeline and summary of the work undertaken is required.”*
- ii. Rural, and Urban and Services Plan Changes - Council is to provide a statement on the process undertaken with the above plan changes particularly documenting the engagement with Mana Whenua in relation to the application site. Inclusion of a timeline and summary of consultation is required.*
- iii. In addition to items (i) and (ii) Council is requested to provide information of any significant policy decision that may have referenced the Application site.*

The timeline that follows describes:

- the process leading up to and following the Environment Court Plan Change 88 Decision related to sites of significance; and
- the processes undertaken with the Rural and Urban and Services Plan Changes, with a particular focus on engagement with Mana Whenua.
- strategic planning work undertaken during the timeframe of the timeline provided.

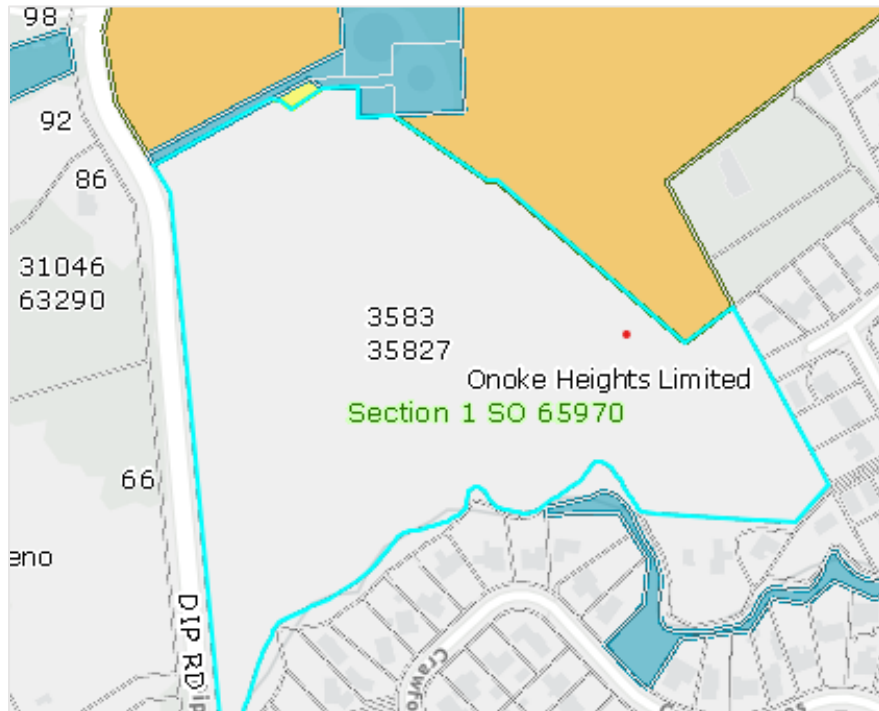
### 2. Timeline

The information set out in the timeline has been collated following a research of Council’s electronic and hard copy records. The short timeframe (2 weeks) within which the information search was undertaken has potentially limited the fullness of the search. The filing system, with differing naming conventions may also mean that not all relevant information has been accessed.

This memo should not be viewed as an exhaustive record of all information Council may hold in relation to the clarifications outlined in (i) -(iii) above.

## 2.1 1994-1996

In 1994, an application for a private plan change to the Whangarei Transitional District Plan was submitted by Reyburn and Bryant on behalf of Landcorp Property Holdings to the Whangarei District Council (Council). The plan change was accepted by Council as Plan Change 88 and sought to change the zoning of Section 1 SO 65970 at Dip Road, Kamo (the “Onoke Block”). Refer **Figure 1**.



**Fig 1. Location of “Onoke Block”** [Property \(wdc.govt.nz\)](http://wdc.govt.nz)

Plan Change 88 (PC88) proposed to rezone the “Onoke Block”, from Rural H and Rural B Zones to Residential Landscape Protection.

PC88 was notified in February 1995 with the submission period running from 9 February 1995 until 22 March 1995. Council held a hearing into the plan change with a decision made to decline the plan change on the 5 July 1995.

The reason for the decision was recorded as follows:

*“The Council is not satisfied the statutory obligation of consultation with the local tangata whenua required in terms of Part 1 to the first schedule of the Resource Management Act 1991 have been adequately filled.”*

Landcorp Property Holdings Ltd (now CDL Land NZ Limited) lodged an appeal on 31 July 1995 to the Council decision to decline PC88, seeking that the court overturn the decision and confirm the plan change.

The matter was heard before the Environment Court on 25 November 1996. The decision of the environment court is attached as **Appendix 1**, and records that after hearing the submission from Ngāti Kahu o Torongare, the Court ruled:

*“...that the application should not be confirmed because to do so would fail to give effect to section 6(e). The appeal is therefore disallowed, the respondent’s decision is confirmed, and the proposed plan change is cancelled.”*

## 2.2 1997 to 2004

### **District Plan Review**

A full District Plan review was initiated in 1997. As part of this plan review, we understand from a memo prepared by council staff, that:

- two Hui were held with the Ngararatunua Marae; the first on 18<sup>th</sup> October 1997; and the second on 28 March 1998.
- At the first hui, the Council proposal to include (schedule) Sites of Significant to Māori on the planning maps was rejected by hapu. One of the reasons being that the hapu considered that all their land was sacred.
- At the second hui, it was articulated that it was impossible for Māori to isolate a tapu to an exclusively defined area as customary rituals which are carried out, for example when death occurs, cover a large geographical area. On the basis of this consultation, no Sites of Significance to Māori within the Ngararatunua rohe were included in the notified version of the proposed District Plan.

The proposed District Plan was notified on 18 September 1998 for public submissions.

Ngararatunua Marae made a submission in relation to Resource Area Map 12 (submission reference 686/4).

The submission recommendation prepared by Council staff stated:

*“That the submission of the Ngararatunua Marae (686/4) be ACCEPTED IN PART by investigating a Variation or Plan Change to the Plan to identify and protect Sites of Significance to Māori, including consideration of Te Paea Soldiers Memorial Marae, Ngararatunua on Church Road, Ngararatunua maunga, Parakiore, Onoke, Hurupaki, Rawhitiroa, Maungarei, Hikurangi and Matarau subject to confirmation from the hapu.”*

### **Hearing of Proposed District Plan**

A notice of hearing was published in the Whangarei Leader on 22 February 2000. The submitters, including Ngāti Kahu O Torongare/ Te Parawhau Hapu/Iwi Trust Board, were informed on 2 March 2000 of the upcoming hearing.

The Hearing Committee made a recommendation on the proposed District Plan, which was subsequently adopted by Council on 4 July 2001. In the decision of Council, it was recorded in relation to the Ngararatunua Marae submission that:

*"While it is recognized that Council has a duty to protect, as far as practical, sites of significance to the Tangata Whenua, it is important that as many parties as possible are given effective opportunities to provide input into the process of identifying particular sites in the district. Council will undertake further consultation with the Ngararatunua Marae, and landowners/occupiers affected by the submission, in order to more specifically determine sites of significance in the areas mentioned as part of the Plan Change process."*

On 15 August 2001, the Ngararatunua Marae Committee subsequently lodged an appeal to the Environment Court against the Council decision. The Appeal sought the inclusion of their mapped sites of significance within Map 12 of the proposed District Plan. The reason for the appeal is recorded as follows:

*"The Marae Committee seeks the council's recognition of these sites and in particular Ngararatunua maunga; it is the people's heritage. It needs its young people of the future to be able to stand there and feel they belong, not to see the maunga covered with houses."*

*The committee also binds the District Council's statement to "undertake further consultation with the Ngararatunua Marae and landowners/occupiers affected by the submission ...."*

### **Environment Court Mediation**

Environment court mediation in relation to the appeal commenced in December 2001. Through this process we understand from a memo prepared by Council staff, that:

- The Presiding Judge gave the following direction on 28 November 2002:

*"By Friday 28 February 2003 Ms Bruce is to have collected, and is to present to the Council, full written evidence in support of the application to have areas of significance to Iwi noted in the Whangarei District Plan."*

*If this deadline is not met, in fairness to all parties involved, the appeal may have to be struck out."*

*I noted that if there are any issues regarding confidentiality being needed for waahi tapu, Ms Bruce may apply to the Court for a confidentiality order, limiting disclosure to certain named parties and the Court."*

- On 28 February 2003 the Marae Committee presented documentation in response to the courts request, including cultural impact assessments on various resource consent applications and general evidence on the history of the Ngararatunua Marae and its rohe. The relief sought was reiterated within this documentation as follows:
  1. *"That the Environment Court order the Whangarei District Council to recognize and acknowledge the area identified by the mountains, inclusive of the mountains, and the entire area encircled by the mountains, as a site or as sites of significance to the hapu-iwi of Ngāti Kaho o Torongare-Te Parawhau."*

2. *That the Environment Court order the Whangarei District Council to record the area identified by the mountains, inclusive of the mountains, and the entire area encircled by the mountains, in the Whangarei District Plan, as being a site – sites of significance to the hapu-iwi of Ngāti Kahu o Torongare-Te Parawhau.*
  3. *That the Environment Court order the Whangarei District Council to hear the submissions and statements of evidence at the Te Paea Soldiers Memorial Marae (Ngararatunua), so that the nature and environment are commensurate to the nature of the statements of evidence. So that the kaumatua, kuia and indeed the Ngāti Kahu o Torongare-Te Parawhau hapu-iwi can attend the hearing in an environment that is familiar to us. That the hearing venue be changed to the Te Paea Soldiers Memorial Marae (Ngararatunua).”*
- In February 2003 the Presiding Judge asked Council to consider the sufficiency of the documentation provided and to consult with the appellant regarding future steps to resolve the Appeal.
  - Council subsequently formed a view that the material in the document provided by the marae committee did not adequately identify the areas of significance and the marae committee were advised accordingly.
  - Council requested through formal mediation on 3 September 2003, that subject to a Council commitment to proceed with a Plan Change to include Sites of Significance with the Ngararatunua rohe within the District Plan, the Marae Committee discuss the possibility of withdrawal of the appeal and/ or the possibility of withdrawal of the appeal that relates to the residential properties.
  - A settlement agreement was drafted by Council, which was then verbally agreed to via a phone conference between Judge Laurie Newbrook and the marae committee on 29 March 2003. This resulted in the appeal being withdrawn subject to terms as set out in the settlement agreement.

### **Environment Court Decision on Appeal RMA671/01**

The terms of settlement agreement are attached to the Environment Court decision dated 6 April 2004 attached as **Appendix 2**.

The settlement agreement included the following undertakings:

- That Council consult with the Ngararatunua Marae on resource consent applications as an interim measure until a proposed plan change is approved.
- That Council introduce a Plan Change when the District Plan has become operative<sup>1</sup>.
- That Council will provide the services of a stenographer and contribute a maximum of \$10,000.00 toward the cost of a consultant who will formulate the information into a report suitable for the compliance of the requirements for Plan Changes in terms of the Resource Management Act 1991.

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<sup>1</sup> The District Plan was made Operative in 2007.

- That the Ngararatunua Marae Committee provide the information required and will differentiate between the layers of processing:
  - waahi tapu - no go areas - needs a resource consent.
  - sites significant to Māori -to be controlled by performance standards -restricted discretionary resource consent.
  - heritage areas of significance to Māori - needs a cultural assessment and covenants.
  - alter layer might need a cultural assessment-lwi to advise.
  - safe areas -no requirements.
- That the Council notify a Plan Change with the above-mentioned and give all affected parties an opportunity to make submissions and to be heard before the Council approves the Plan Change.
- That the Council will not withdraw the Plan Change.

### **Post the Environment Court Decision**

Following the Environment Court decision, we understand from a 2004 Staff Memo entitled Chronological Report of Events – Ngararatunua Marae that:

- a first meeting between the Ngararatunua Marae Committee representative and the Whangarei District Council took place on Friday 6 August 2004 in the offices of the Trust Board to discuss the interim measures as a result of the Court decision No. A045/2004 on RMA671/01; and discuss the longer-term project regarding the identification of the Sites of Significance to Māori.
- A second meeting between the Ngararatunua Marae Committee representatives and the Whangarei District Council took place on Monday 30 August 2004 in the office of the Trust Board to discuss the area to be covered by the study discussed at the meeting held on 6 August 2004; and the involvement of a consultant in the study.

The proposed District Plan became operative in 2007.

Further briefings and discussions on the sites of significance to Māori Plan change are recorded as having taken place between 2008 and 2009.

## **2.3 2004-2009 Structure Plan and Growth Strategy**

### **Structure Plan**

A Kamo, Springs Flat, Three Mile Bush and Whau Valley structure plan project that included Onoke commenced in 2004. The structure plan was adopted in February 2009 and identified Onoke as Future Living 1 Environment.

The structure plan document records the following in relation to consultation:

*“In February 2004 a public workshop was held at the Kamo Bowling Club. The 50-plus attendees at the workshop were asked to write and draw their ideas for the study area over the next 20 years and beyond. Meetings were also held with Kamo Community Incorporated, and their plans for Kamo Village were discussed. A summary of consultation for the Structure Plan can be found in the report, ‘Kamo, Whau Valley, Springs Flat and Three Mile Bush Structure Plan – Consultation Report’.”*



*The issues and ideas raised were collated and analysed. In conjunction with earlier consultation, this consultation formed the basis of the Structure Plan.*

*Further public consultation was carried out in 23 April and 3 December 2008, with feedback being received and taken into consideration in the land use proposals. A select group of Councillors and Council Staff known as the Focus Group met on 25 February, 25 March and 22 September 2008 to discuss the proposal before public meetings.”*

We were unable to locate the document referenced in the Structure Plan document.

### **Growth strategy**

Council initiated work around a growth strategy. As part of this work Repo Consultancy was commissioned to provide a report titled ‘Iwi/Hapu Report’ and subtitled ‘Iwi/hapu input to WDC Growth Strategy: Sustainable Futures 30/50’.

The structure plan document records the following in relation to consultation:

*“Tangata Whenua were consulted for their input on the future of Whangarei, as part of the urban growth strategy carried out by Council. Three hui were held in May 2007, at three different venues: Pehiaweri Marae, Tarenga Paraoa Marae and Ngararatunua Marae on the 12th, 19th and 26th of April 2007, respectively. Contributions from the attendees were collated and a feedback meeting was held with kaumatua for a debriefing on the issues raised at the meetings. A record of the issues was sent to Council’s Iwi Liaison Committee as part of the agenda. A summary of issues raised by Tangata Whenua is listed in the Iwi Consultation Report.”*

We were unable to locate the document referenced in the Structure Plan document.

## **2.4 2010- 2018 Sites of Significance to Māori Plan Change Project**

Work toward a Sites of Significance to Māori plan change commenced in 2010. Records show that this project was set up as a broad study covering the district, rather than a plan change specific to the Ngararatunua rohe.

### **Study Methodology**

In 2010 Repo Consultancy was commissioned to provide a report titled ‘*The Research Methodology and plan for gathering information from hapu and Iwi*’ to Council. It is recorded that:

*“The objective of this report is to provide guidance on consultation between Council and tangata whenua in relation to SOSM; outline a research methodology; and recommend improved Council policies and procedures. The consultation and research methodology may be replicated across all hapu and iwi within the district.”*

This report was completed in June of 2010 and in the March 2011 Repo Consultancy was commissioned again to take on the Project Management role for the project itself. This included managing Iwi/ Hapu inputs to the mapping of Sites of Significance to Māori.

## The Project

The following Iwi and Hapu were identified to participate in the project:

- NGATIWAI
- PATUHARARKEKE
- NGATI KAHU KI TORONGARE
- TE PARAWHAU
- TE WAIARIKI, NGATI KORORA, NGATI TAKA PARI NGATI HAU
- NGATI HINE

The Project Management Schedule consisted of 6 Milestones:

1. Completion of Report outlining timeframes and costs
2. Hapu Consultation
3. Research - Preparation & Workshops & Fieldwork
4. Research - Workshops & Fieldwork
5. Recommendation to Council
6. Maps

Hapu were to be approached to take part in this project over the three years:

- 2011 - Ngatiwai & Patuharakeke & Ngati Hine
- 2012 - Ngati Hau & Ngati Kahu ki Torongare
- 2013 - Te Parawhau & Te Waiariki, Ngāti Korora, Ngāti Taka Pari

## 2012 Project Update

At a 28 September 2012 Te Kārearea Strategic Partnership Forum, members were updated on the sites of significance to Māori project. The minutes read:

- *Council has appointed Tui Shortland (Repo Consultancy Ltd) to manage the information gathering process in collaboration with hapū/Iwi groups. Tui has produced three reports that set out the methodology for collecting the information (ethno mapping) and procedures on how that information should be managed by Council.*
- *To date three groups (Patuharakeke Ngātiwai and Ngāti Hine) have completed their studies, and research by Ngāti Hau and Ngāti Kahu o Torongare is progressing. Te Waiariki and Te Parawhau are ready to begin with their research and a project plan setting out timelines for studies for the remaining hapū/Iwi will be produced by December 2013. Initially it was anticipated that this would be a five-year program however good progress with the iwi/hapu groups mean that it is likely the studies will be completed ahead of schedule.*
- *An information sharing agreement specific to each hapū/Iwi has been produced and is almost complete. Negotiations around the agreement are now at a stage where we are finalizing dates for hui to sign these agreements. The hui will take place on appropriate marae and will be attended by Councilors and staff from across the council that will be dealing with the information.*

### **2013 Ngāti Kahu o Torongare access to information agreement**

An agreement was drawn up between Council and Ngāti Kahu o Torongare for access to information about sites of significance to Māori. This was dated 09 December 2013 and served to ensure the protection of the information provided by hapu against inappropriate access and use.

The information Hapu agreed to provide to Council included:

*“GIS shape files, tiff images of the maps and a metadata document which:*

1. *Describes the project, contract number(s), who commissioned the work in WDC, who did the work and their contacts, outline the scope, reason and purpose for the Information and how to use it and any other ancillary information to support the project and the methodology of Information capture.*
2. *The metadata document will describe the attribute Information with at least the following:*
  - Map name: i.e. the Shape file name*
  - Description: Brief explanation*
  - Feature Type: Polygon, point, line*
  - Attributes Used: List each and describe*
  - Attribute Codes: If attribute fields use a specific set of unique codes, these are described.*
  - Accuracy: To what accuracy was the Information captured and how is it to be used, for example, if lines were digitized to represent a physical feature, then what width on the ground should they be used or the appropriate scale of display.*
  - Source(s): Company, persons involved.*
  - Date of build:*
  - Authority: Suitable cultural impact assessment or other study/analysis report identification*
  - WDC Contract Number: If Information supplied under contract.*
  - Other information: As required.*

#### **OR**

*In the event that all of the above information cannot be provided, hapu agree to provide the following minimum information in relation to each SOSM:*

*Location, including the GIS co-ordinates.*

*Legal description*

*Generic site type*

*History, which includes the story for each SOSM”*

This agreement went on to say that all intellectual property rights belong to and remain the property of the hapu, and that council may only use the information:

1. To record Sites of Significance to Māori through ethno mapping;
2. To keep and maintain a database containing details of areas and Sites of Significance to Māori.
3. To assess resource consents and building consent applications.
4. To inform applicants and decision makers of Sites of Significance.

### **2014 Project Update**

It is recorded that by December 2014, Council was advised by Repo Consultancy Ltd that project Milestones 1-5 had been completed and that Milestone 6 is yet to be completed but that no further work on the contract has taken place since 1 November 2013.

The Repo Consultancy response was:

- a) *“Te Parawhau were not prepared to handover the information.*
- b) *All Hapu have done the research and hold the information.*
- c) *They reduced payment to hapu for not progressing the information to handover.*
- d) *WDC staff were not interacting because they were too busy.*
- e) *Suggested that a meeting be arranged with hapu to obtain the information.*
- f) *Undertook to try to complete the project.”*

### **2015 Ngāti Kahu data set**

It is recorded that:

- The first Ngāti Kahu data set was received by Council from Repo Consultancy on 20 February 2015. The data was checked against the project requirements, and it was determined that it did not meet the them given the missing attributes – e.g. Long name, point type, description etc.
- A second data set was received by Council on 10 July 2015. The data was again checked against the requirements, and it was determined that a number of issues remained that required discussion.

### **2016 Project update**

The following issues with the project were identified in an email between Council staff in January 2016:

- *“The main issue presently is the transfer of information into the WDC GIS system which is not compatible with the Google Earth system that the Hapu used (the issue is cost for the Arc ESRI license vs a web-based public system).*
- *The second issue is that there is still reluctance by Hapu to provide information as there is still a trust issue—see the steps that were taken to overcome that hereunder.*
- *The Third issue is that this project coincides with the Treaty Settlement hearing process and all the energy of Hapu are going into that process notwithstanding that the Sites of Significance project has assisted Hapu in their preparation.”*

### **2017 – External Consultant for GIS maps Data Project**

In 2017 it is recorded that Spatialize was engaged to take any data obtained through Repo Consultants Project and implement the data management framework to ensure the sites of significance data is compliant with WDC’s requirements. It is understood from records at this time that purpose of the project was to amalgamate data from various formats and data projections into one single point GIS dataset and one single polygon GIS dataset.

The final GIS data is stored in file geodatabase format. The data contains a compilation of sites and areas of significance from the following groups:

- Te Waiariki – 36 sites
- Ngati hau – 12 sites, 42 areas
- Ngatiwai – 503 areas
- Patuharakeke - 23 sites, 23 areas
- **Ngati Kahu – 34 sites**
- Ngati Hine (17 August 2016 dataset) – 31 sites

This data is bound by access to information agreements. It is recorded that there are missing access levels for:

- Ngati Hau polygons
- Te Waiariki points
- Ngati Hau Points
- **25 of Ngati Kahu Points**

## 2018 Project Update

An update was provided to Te Karearea Strategic Partnership Forum during the February 2018 meeting. Minutes from this meeting state:

*“The District Plan currently lists 86 sites of significance in Schedule 4. The locations of the sites are identified in the Resource Area maps and Schedule 4 lists and describes the sites. Chapter 60, Sites of Significance to Māori, NTW (Network Utilities) and the subdivision rule chapters contain rules intended to protect the sites from damage or destruction. There are a significant number of sites that are important to tangata whenua that are not identified or recorded on the District Plan maps.*

*Council has begun updating its list of scheduled sites by working with iwi/hapu (through a consultant) over the last 6 years. A methodology report was prepared by the consultant setting out the process for obtaining information and Information sharing agreements were signed by 4 hapu that set out how sensitive information provided to council is to be treated. Council has obtained datasets from 6 iwi/hapu who have provided GIS data on 708 additional sites or areas of significance to them. Some of these are discrete points, while others cover large areas across multiple properties.*

*In September 2016, the Historic Heritage chapter of the District Plan became operative. This chapter provides an overarching framework for historic heritage issues generally, with objectives and policies that apply to all heritage items. It is intended that further subsections covering Archaeological Sites and Sites and Areas of Significance to Māori will be integrated into the chapter as the rolling review of the District Plan progresses.*

*Some of the sites recorded as part of PC100 meet the criteria, while others do not, for example, the boundaries of some sites are not clearly defined, and the values associated with others have not been recorded. Nevertheless, the data collected through PC100 provides a good starting point for further engagement with tangata whenua on which sites they want recorded in the District Plan.*

*In the interest of moving the plan change forward, it is recommended that the Council capitalizes on the resources already committed through PC100 and focus on ensuring the data on sites and areas that iwi/hapu have identified and are comfortable with disclosing publicly meet the criteria for inclusion in the District Plan.*

*Due to iwi/hapu lacking GIS programs and capability and were tasked with providing Council with a GIS file. It is recommended that Council staff meet with iwi/hapu representatives to identify the location and values for each site. The locations can be recorded on physical maps or digital photos and the values written down. This information can then be digitized by a GIS expert contracted to the Council with the values linked to the site/area in the GIS attribute table. Digital maps can then be returned to iwi/hapu for verification that the information is correct.*

*For other sites that hapu are reluctant to disclose information around, it is recommended that funding be provided in the LTP over the medium term for a project to work with mana whenua to record the locations of level 2 and 3 sites and to develop internal processes to enable the protection of sensitive sites (silent files).”*

## 2.5 2019-Present Sites of Significance to Māori Plan Change

It is acknowledged that a sites of significance to Māori plan change is a difficult and complex piece of work to get right. Since 2019 further attempts have been made to re-commence this work. A tender process for the work was initiated in 2022. However, this did not result in a supplier being signed up to undertake the work as it was identified through this process that further work around the methodology to work with iwi/ hapu in delivering the plan change was required.

We have since worked through this methodology and are now in the planning phase of this project. This includes working through data sovereignty issues and working toward signing up (through a registration of interest process) willing Iwi/ hapu as partners in the project. The intention is to have all planning in place by mid-2024, to enable the project to commence under a partnered and co-designed methodology with Iwi/ Hapu.

## 2.6 2014-2018 Rural Plan Change

A rural plan change (PC86B) that became operative on 5 July 2018 rezoned the “Onoke Block” from Countryside Environment to Living 1 Environment.

### **Consultation**

We were unable to locate any records to demonstrate whether targeted consultation/ discussion about the “Onoke Block” occurred as part of the re-zoning at this time.

The Section 32 Report and Section 42A Report prepared in relation to the plan change included the following commentary on consultation<sup>2</sup>:

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<sup>2</sup> In relation to bullet point four below it is noted that “Te Karearea” is the Council Strategic Partnership Forum. “Te Huinga” is an organisation representing some of the hapu of Whangarei.

- *“Draft plan changes PC86 A - D were notified to all plan holders, practitioners and iwi contacts, as well as being publicly released for feedback, from November 2014 to March 2015. Feedback was received in the form of written comments, individual meetings, public meetings and hui with hapū representatives.*
- *As a result of feedback on PC85 A-D further work was completed on the rural/urban interface around Whangarei City and the coastal environment. As a consequence three further draft plan changes PC86A and PC86B, and PC87 were formulated and then notified for comment to all plan holders, practitioners and iwi contacts. These plan changes were publicly released for feedback from August 2015 to September 2015.*
- *Due to the time elapsed since the creation of the Urban Structure Plans, PC86 was notified directly to a random selection of landowners to gain an indication of feedback from a landowner’s perspective.*
- *The draft Rural Plan Changes were presented and work-shopped with Te Karearea and Te Huinga...*
- *All feedback was summarised and presented back to the Council’s Planning Committee to inform the plan change drafting.*
- *The 10 plan changes were notified together. This included letters and summary booklet being posted to 21,000 directly affected landowners, plus the standard newspaper notice and ongoing information in the newspaper. Full details of the plan changes were available on the WDC website. During the submission and further submission period Policy staff were available answering calls and providing a drop-in service for customers. WDC also extended the formal notification periods to provide additional time for submitters to consider the plan changes and make considered submissions.*
- *WDC identified properties directly affected by submissions requesting specific rezoning. Letters were sent to these owners informing them of the proposed plan changes and submissions received and the opportunity to make a further submission.”*

## 2.7 2018-2022 Urban and Services Plan Change

The Urban and Services plan change (PC88) that became operative on 15 September 2022 rezoned the “Onoke Block” from Living 1 Environment to General Residential.

### Consultation

We were unable to locate any records to demonstrate whether targeted consultation/ discussion about the “Onoke Block” occurred as part of the re-zoning at this time.

The Section 32 Report and Section 42A Report prepared in relation to the plan change included the following commentary on consultation<sup>3</sup>:

- *“The draft Urban Plan Changes were advertised to all plan holders, practitioners and iwi contacts, as well as being publicly available for pre-notification feedback, from June 2018 through August 2018. Feedback was received in the form of written comments, individual meetings, public meetings and hui with hapū representatives.*

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<sup>3</sup> In relation to bullet point three below it is noted that “Te Karearea” is the Council Strategic Partnership Forum. “Te Huinga” is an organisation representing some of the hapu of Whangarei.

- *A consultation website was also developed for the Urban Plan Changes which included an interactive map with draft mapping and an online survey with targeted questions. Throughout the consultation phase, additional questions were posted on Council’s Facebook page to promote further discussion and engagement.*
- *The draft Urban Plan Changes were presented and work-shopped with Te Karearea and Te Huinga...*
- *Feedback was summarised and presented back to the Council’s Planning Committee to inform the plan change drafting. Following this, two additional Council briefing meeting were held to discuss the draft plan changes.*
- *The Urban and Services plan changes were publicly notified together. This included letters being posted to every ratepayer in the district, letters and summary booklets being posted to directly affected landowners, letters being posted to interested landowners, formal Notice published in the newspaper, and on-going information in the newspaper. Full details of the plan changes were available on the WDC website. During the submission and further submission period, WDC Policy staff were available answering calls and providing a drop-in service for customers. WDC also extended the formal notification periods to provide additional time for submitters to consider the plan changes and make considered submissions.*
- *Following the close of the submission period, WDC identified properties directly affected by submissions requesting specific rezoning. Mapping was made available online which identified sites with specific rezoning requests informing landowners of the requested zoning and the relevant submission.”*

Approved by:



Yvonne Masefield  
**Manager District Plan**

Date: 30 November 2023



**Appendix 1:**

**Appendix 2:**

LAW  
KG  
348  
NLS



Decision No. A99/96

IN THE MATTER

of the Resource Management Act  
1991

AND

IN THE MATTER

of an appeal under clause 14 of the  
First Schedule

BETWEEN

CDL LAND NEW ZEALAND  
LIMITED (formerly Landcorp  
Property Holdings Limited)

(Appeal RMA 852/95)

Appellant

AND

THE WHANGAREI DISTRICT  
COUNCIL

Respondent

BEFORE THE ENVIRONMENT COURT

Environment Judge DFG Sheppard (presiding)  
Environment Commissioner PA Catchpole  
Environment Commissioner F Easdale

HEARING at Whangarei on 28 and 29 May 1996

APPEARANCES

Ms R Macky for appellant  
Mr G Mathias for respondent  
Mr O A Mitchell in person  
Mr B C Jessup for A Jessup  
Mr H Parata in person  
Mr N H Baker in person  
Mr H Kingi in person



## DECISION

### *Introduction*

This is an appeal against a decision by the Whangarei District Council declining a privately promoted plan change to rezone a block of land near Kamo from Rural to Residential Landscape Protection zone. The reason the respondent gave was that it was not satisfied the statutory obligation of consultation with the local tangata whenua had been adequately fulfilled.

The subject land has an area of 6.87 hectares and is known as the Onoke Block. It has frontage to the eastern side of Dip Road, and adjoins a scenic reserve and also adjoins residential land. Most of the land is zoned Rural B, but a strip along the Dip Road frontage is zoned Rural H.

The front part of the property adjacent to Dip Road is mainly in grass with some infestation of gorse. The rear half, which adjoins the scenic reserve and the residential areas, is mainly in scrub with some small clumps of bush, which contain some relatively mature puriri and other trees. It varies in contour, being relatively flat at the southern end, and rising to the north. The soils are volcanic loam, moderately well drained. The property is used for grazing stock, and has limited farming value.

The appellant proposes subdivision of the property for low-density residential development. By the proposed plan change, the property would be rezoned to Residential Landscape Protection zone, providing for subdivision into lots with a minimum site area of 2,000 square metres as a controlled activity, and one residential dwelling per site as a permitted activity, with a maximum building coverage of 20% of the net site area. (The notified plan change stipulated 30% in error). Residential dwellings containing two or more household units on a site would be discretionary activities.

The main issues raised at the hearing were the adequacy of the consultation with the tangata whenua (the ground for the Council's decision declining the plan change), and the relationship of Maori and their culture and traditions with their ancestral land (a matter of national importance, see section 6(e) of the Resource Management Act). As we have concluded that those issues could be decisive, we confine this decision to them.



*Consultation with tangata whenua*

The adequacy of the consultation with the tangata whenua about the proposal was directly in issue. We have therefore to make our findings about what occurred in some detail.

On 31 August 1994, the appellant's Whangarei Property Manager, Mr A P Wiseman, and its planning and resource management consultant, Mr M J Dunn, discussed the draft plan change with the then District Council senior planner, Mr P Frawley. In the course of the discussion, Mr Frawley indicated the parties with whom the applicant should consult, including local iwi. The Council's Maori Liaison Officer, Mr S Napia, gave Mr Dunn the names and addresses of two iwi contacts : Grey Bartlett of the Kamo Maori Committee, and Maree Millar of the Whangarei Maori Executive.

In September Mr Dunn sent copies of a draft plan change request and an assessment of environmental effects to all those indicated by Mr Frawley, including the iwi contacts Mr Bartlett and Ms Millar. The covering letter included the following:

As a party with possible interest in the proposal we would like to obtain your views or any matter associated with them. This is so any concerns can be addressed prior to lodging the request with the Council and so the consultation requirements in the Resource Management Act are met.

...  
If you would like to discuss any matter please contact me or Andy Wiseman at Landcorp directly on phone 438 3400. A meeting can be arranged on site if this would help... We would like to submit the request, report and associated plans to the Council in the next couple of weeks and would appreciate if you could contact us at some stage during this period, particularly if you have any concerns.

As a result of requests from residents of the vicinity, on 18 October 1994 Mr Wiseman and Mr Dunn held a meeting at Kamo and about 25 people attended.. Following the meeting the concept plan for the development was revised in response to concerns raised at the meeting. The changes included reducing the number of proposed lots, altering lot boundaries to restrict resubdivision, and enlarging the proposed reserves.

There was no response to the letter from Mr Bartlett or the Kamo Maori Committee or from Ms Millar or the Whangarei Maori Executive.

A conservation officer of the Department of Conservation wrote to Mr Wiseman in November 1994 advising that the Department had inspected the property, and recommending protection for larger trees and an archaeological inspection as there was a record of a pa site on the adjoining scenic reserve. Mr Wiseman duly arranged for an archaeological inspection of the



property by Ms A Slocombe, who reported that no archaeological features were apparent, although ground cover made identification of archaeological sites difficult in parts of the property. She recommended a further inspection after land clearance.

The appellant formally submitted the proposed plan change to the District Council in December 1994, and on 19 January 1995 the Council's Environmental Services Committee resolved to publicly notify it. That was done on 21 February 1995, the time for submissions closing on 22 March.

The District Council sent a copy of the proposed plan change to the Whangarei Maori Executive, and Mrs T R T Pitman was asked to investigate. She understood that the Onoke Block is ancestral land of the Ngati Kahu, and she met with a Ngati Kahu kaumatua, Mr H Kingi, and his daughter Mrs W Bruce, at Kamo and they went out and visited the property. Mrs Pitman suggested to Mr Kingi and his daughter that their concerns should be put to the Council by way of submission, and that they should do that at once, as she believed that there were only a few days to go before the closing of submissions.

Mrs Pitman also told Mr Wiseman that there would be objection because of cultural sensitivity, and advised him to consult with Ngati Kahu hapu, and gave him Mr Kingi's address. She testified that Mr Wiseman responded that he was not worried about whether they objected or not as he had the title.

On 10 March Mr Kingi and Mrs Bruce met Mr Wiseman and advised him that Ngati Kahu were tangata whenua for the Onoke area, and that there were waahi tapu and cultural sensitivities in the area. Mrs Bruce had obtained copies of maps of the area. Mr Wiseman showed them a booklet about the proposal and he considered that they appeared comfortable with the proposal, and they did not voice any concerns or objections. He gave them material describing the proposal so they could discuss the proposal with their iwi, and mailed her a copy of the booklet a couple of days later. He later phoned Mrs Bruce to verify that she had received it.

Twenty-eight submissions on the proposed plan change were received by the District Council. All but one were from residents of the Kamo West area, the other being from the Whangarei Native Forest and Bird Protection Society Inc. Seven of the submissions were in support of the plan change, and 21 in opposition, including a petition with many signatures. The opposition



was generally on the basis that the land should be kept as green belt and added to the scenic reserve. Other matters raised included additional traffic, flooding of low-lying areas, and effects on stormwater systems.

There was no submission from the Maori contacts to whom Mr Dunn had written in September, or from Ngati Kahu iwi whose representatives Mr Wiseman had met in March. However the petition included a claim that the Onoke Block contained part of historic pa site.

The Council's Judicial Committee heard the submissions on 14 June 1995. At that hearing, representatives of Ngati Wai and Ngati Hine iwi sought to address the meeting. However as they had not lodged submissions on the plan change they were not permitted to do so in their own right. Instead they were called as witnesses for one of the submitters.

Mr H Parata of Ngati Wai and Mr N Baker of Ngati Hine claimed that they had not been consulted. Both claimed that part of the Onoke Block was waahi tapu, but no site was identified, and no information was given in support of those claims. Mr Parata stated that it was possible that the site was waahi tapu for spiritual reasons even if no physical evidence could be found.

On 4 July 1995 the Council adopted its committee's recommendation that the plan change be declined for the reason already reported in the first paragraph of this decision. Following that on 19 July Mr Wiseman contacted Mrs Bruce, and the same day he was contacted by Ms M Armstrong on behalf of Mr Parata. Mrs Bruce told him that Mrs Pitman of the Whangarei Maori Executive had visited her, but it had not been considered appropriate to discuss the matter at that time because of two tangis that occurred then. The plan change had not been discussed by the iwi either before or after that meeting. Ms Armstrong advised that Ngati Wai had attempted to arrange a site visit by local kaumatua, but because of a tangi that had not occurred.

On 28 July, the District Council's Maori Liaison Officer, Mr Napia, confirmed to Mr Wiseman that the tangata whenua of the subject area are Ngati Kahu hapu, and that Mr Haane Kingi was authorised to speak on their behalf. Mr Wiseman invited representatives of Ngati Kahu to discuss the proposed plan change, and a meeting was held on 22 August with Mr Kingi and Mr Bruce. They advised that they had requested a resource planner to investigate the proposal and that they would arrange a meeting with the relevant kaumatua to discuss the



application, and respond as soon as possible. However despite reminders, by the time of the appeal hearing in May 1996, the applicant had received no response from Ngati Kahu.

In summary, then, the applicant sought to consult with the people indicated by the District Council as representatives of the tangata whenua; it held a meeting with local residents to ascertain their views, and altered its proposal as a result; the District Council sent a copy of the plan change to the Maori Executive; by one means or another the relevant kaumatua of the tangata whenua, Mr Kingi, did become aware of the proposal did meet with the applicant's representative, and was given details about the proposal; but although invited to do so, the tangata whenua did not seek further information from the applicant, did not lodge any submission on the plan change, and did not express to the applicant, or to the District Council, any views about how the proposal might impact on their cultural or spiritual interests as tangata whenua (save a general reference to the presence of waahi tapu and cultural sensitivities), nor request any changes to meet those interests.

Counsel for the appellant, Ms Macky, submitted that the appellant had attempted to consult with the tangata whenua in accordance with the advice of the District Council, but that there had been no response from the tangata whenua. She reminded us that the tangata whenua had been aware of the proposal within the submission period; that they had been given material by Mr Wiseman who had followed up to ensure that they had received it. Ms Macky contended that there had been meetings with tangata whenua but nothing had come of them; and she submitted that lack of success with consultation does not amount to a failure to address responsibilities in respect of the principles of the Treaty of Waitangi. In the absence of a response from the tangata whenua, despite reminders, the applicant was entitled to conclude that they had no matter that they wished to discuss.

Parliament has given people the right to apply for changes to district plans, and the right to have those applications decided by the relevant territorial authority (subject to appeal to this Court). We hold that it would not be consistent with those rights to cancel a District Council decision on the ground of inadequate consultation with the tangata whenua where they have been given the opportunity of responding but have not done so. That would be more than consultation : it would approach giving the tangata whenua a veto, and Parliament has not done that.





We accept the submissions of counsel for the applicant on this point, and reject the claim that the plan change should be cancelled on the ground of inadequate consultation with the tangata whenua.

*Maori ancestral land*

However in considering the appeal on its merits, we have to address whether the proposed plan change would serve the purpose of the Resource Management Act of promoting the sustainable management of natural and physical resources. Parliament has given specific directions in Part II of the Act about achieving the purpose of the Act. Relevantly in section 6:

In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall recognise and provide for the following matters of national importance:

...  
(e) The relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga.

That issue must be given careful attention independent of any question about consultation. We have to decide the issue on the basis of the evidence given at the appeal hearing, which we summarise to make our findings.

Mr Wiseman was aware that there is the site of a former pa on the adjoining land which is the Onoke Scenic Reserve. However the archaeological investigation which the appellant commissioned on its own land did not reveal any archaeological remains or any evidence of Maori occupation of that land, though Mr Wiseman accepted that there could be a midden obscured by gorse growing over it.

Mrs Pitman deposed that there are tapu sites in the larger area known as Onoke. She believed "Ngati Kahu ancestors may have lived on the property and that they and their taonga could be buried within the block". In cross-examination she said that she could not pinpoint the location of the waahi tapu on a map, and she agreed that she was speaking of waahi tapu in the wider area, not just the subject land. She also agreed that the area may have been a stopping place, and that the ancestors may not have lived there.

Mrs Bruce deposed that the Onoke Block is of considerable significance to Ngati Kahu as the area was used as a burial site in the past; and that there are areas of waahi tapu in the block. In cross-examination she stated that the Onoke Block covers 138 acres, and that the subject land is a portion of that.



Mr H Kingi deposed that he is a kaumatua of Ngararatunua Marae, and a direct descendant of Ngati Kahu O Torongare, the original occupants of the Onoke Block. He stated that his ancestors were buried there, and that there were sacred trees (puriri and karaka) and burial places on Onoke that should not be disturbed. It is also a place for burying whenua. The creek that runs through it is where they wash, and is a sacred creek, from which water is taken to wash sick people. In cross-examination he affirmed that all of the land, the whole area of Onoke, is tapu to Ngati Kahu, even the areas that the appellant wishes to subdivide, and he considered that it should be kept as tapu. Asked whether the land could be cultivated, Mr Kingi responded that he would need to discuss that with the hapu to decide what could be done.

Mr H T M Parata is not himself Ngati Kahu but Ngatiwai, who are related to Ngati Kahu. He deposed that he was aware of waahi tapu on the block, and in cross-examination he stated that he was referring to the area of the proposed plan change.

Mr N H Baker is not Ngati Kahu either, but Ngati Hine. He claimed that the Onoke Block is within Te Rohe Potae Tawhito of Ngati Hine, but agreed that the Onoke Block is not part of the current rohe of Ngati Hine and that Ngati Hine have no tangata whenua status on Onoke. He also deposed that there are sacred sites on the "rezoning block", but gave no particulars nor source of his knowledge.

The crucial testimony was that of Mr Kingi, supported as it was by more general evidence of other witnesses who had less authority on the topic. Mr Kingi's evidence was not diminished in cross-examination, nor contradicted by the evidence of any other witness. We accept it, and find that the Ngati Kahu have a relationship in their culture and tradition with the subject land as ancestral land, water, sites, waahi tapu, and other taonga there.

In her address in reply at the conclusion of the appeal hearing, counsel for the appellant submitted that it would be unreasonable for the land just to be left, and incapable of use. As the appellant had not previously been informed that the land was waahi tapu, counsel sought opportunity for the appellant to consult further with Ngati Kahu about the proposal.

We agreed to allow time for that and indicated that it would be for the appellant to elect whether it wished the Court to give its decision on this appeal. However the appellant has now



asked for the appeal to be decided, and that is done by the issue of this document – hence the unusually long delay between the end of the hearing and the giving of the decision.

Our decision relates only to the proposed plan change. Nothing should be inferred from it about the lawfulness of any use of the subject land in accordance with the current district plan provisions.

However in exercising the Court's function of deciding this appeal about the proposed plan change in relation to managing the use of the subject land to achieve the purpose of the Resource Management Act, we have to recognise and provide for the relationship of Maori with that land, and the water, sites, waahi tapu, and other taonga on it, as a matter of national importance. To rezone the land in a way that would allow subdivision and residential occupation of it would not recognise, nor would it provide for, that cultural and traditional relationship. Quite the contrary.

There are other topics that would need to be addressed before we could consider allowing the appeal, including those raised by Mr Mitchell and Mr Jessup. However even if we were satisfied that in all other respects the appeal deserved to be allowed and the plan change confirmed, those respects would not be sufficient to prevail. The importance given by Parliament to Maori cultural and traditional relationships with their ancestral lands and waahi tapu is evident from its classification as a matter of national importance. The value of the relationship of the Ngati Kahu with the subject land, and its traditional and cultural significance for them, is clear and strong. The direction of section 6(e) is plainly applicable.

In our judgment, however meritorious the plan change might otherwise be, it should not be confirmed because to do so would fail to give effect to section 6(e). The appeal is therefore disallowed, the respondent's decision is confirmed, and the proposed plan change is cancelled. The question of costs is reserved.

DATED at AUCKLAND this *25<sup>th</sup>* day of *November* 1996



DFG Sheppard  
Environment Judge





Decision No. A 045 /2004

**IN THE MATTER** of the Resource Management Act 1991

**AND**

**IN THE MATTER** of a reference under Clause 14 of the First  
Schedule to the Act

**BETWEEN**

**NGARARATUNUA MARAE  
COMMITTEE**

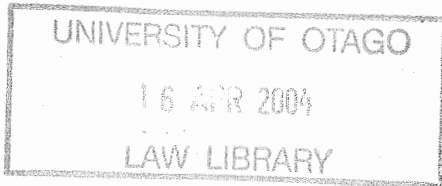
(RMA 671/01)

Appellant

**AND**

**WHANGAREI DISTRICT COUNCIL**

Respondent



**BEFORE THE ENVIRONMENT COURT**

**APPEARANCES**

Mr G Mathias and Mr P Waanders for Whangarei District Council  
Ms W Bruce for Ngararatunua Marae Committee  
Ms A Whitfield for herself (s274) and Walker Whitfield Trust (s274)  
Ms A Williams for herself (s274)  
Ms G Wynyard for herself (s271a)  
Ms R Mortimer for himself (s274)  
Ms E Albuquerque for himself (s274)  
Ms H Easten for herself (s271a)  
Ms L Topp for herself (s271a)

**RECORD OF DETERMINATION AND  
MINUTE OF THE COURT FOLLOWING JUDICIAL TELEPHONE  
CONFERENCE HELD ON 29 MARCH 2004**

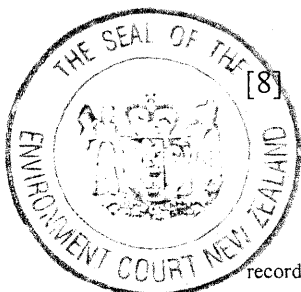


[1] On 24 February 2004 I conducted a conference in Court on this appeal, during a callover of a number of references to the proposed Whangarei District Plan. The parties had at that stage tentatively agreed that the reference would be

withdrawn if the respondent would promise to promulgate and fully process a plan change, once the proposed district plan had been made operative.

- [2] Mr Mathias, counsel for the respondent, indicated that he would provide certain undertakings in writing on behalf of counsel, and Ms Bruce indicated on behalf of the referrer that if she was satisfied with those undertakings, the references would be confirmed as withdrawn.
- [3] On 26 February 2004 the respondent filed and served a memorandum containing the suggested terms for settlement including the undertakings.
- [4] The respondent's staff subsequently endeavoured to contact Ms Bruce, but without success. Accordingly in late March counsel for the respondent requested a telephone conference, and I duly conducted one on 29 March 2004.
- [5] Prior to the phone conference Ms Bruce contacted the Registry and advised my hearing manager that the difficulties in communication between the Marae Committee and the Council had arisen due to a relocation of the Marae Committee office, and a burglary. Ms Bruce indicated that she had intended to write to the Court and the parties giving approval of the terms set out by the Council. She then confirmed that approval orally.
- [6] The terms of settlement as set out in the memorandum of 26 February 2004 are attached.
- [7] The purpose of this Record of Determination is to confirm that the Court is aware of the terms of settlement and of the basis for the withdrawing of the reference, and acknowledges the undertakings given by the Council. In particular it notes that once promulgated, the plan change is not to be withdrawn by the respondent. There are also certain explicit duties of consultation concerning the plan change and concerning applications for resource consent made to the Council in the affected area in the meantime, noting however that activities that are of permitted activity status would not in the ordinary course come before the Council for resource consent, and would therefore be unlikely to become the subject of consultation.

- [8] In the telephone conference Mr Mortimer raised a concern regarding the Marae's consultation over resource consent applications, an issue which I had



previously addressed in the hearing in Whangarei in February. I reminded Ms Bruce that Marae Committee representatives should ensure they are available for consultation and discussion with the public and community when such consultation is requested. I encourage this especially to enable the Marae to develop and foster its relationship with the local community. As a matter of fairness the Marae should make certain that the consultation process remains open and accessible.

[9] The terms of settlement having now been agreed upon, the Court's file is now closed. There is no issue as to costs.

DATED at AUCKLAND this 6<sup>th</sup> day of April 2004.



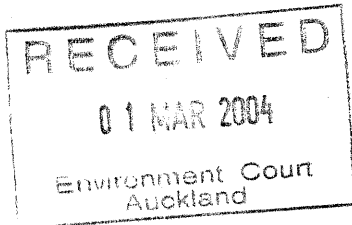
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LJ Newhook  
Environment Judge



BEFORE THE ENVIRONMENT COURT

RMA 671/01



BETWEEN

NGARARATUNUA MARAE  
COMMITTEE

Referrer

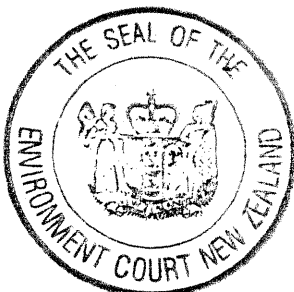
AND

THE WHANGAREI DISTRICT  
COUNCIL

Respondent

MEMORANDUM AS TO TERMS OF SETTLEMENT FROM COUNSEL  
FOR THE RESPONDENT

Thomson Wilson  
Solicitors  
Thomson Wilson House  
Rathbone Street  
(PO Box 1042, DX AP24512)  
WHANGAREI.  
Telephone: (09) 4384-039  
Facsimile: (09) 4389-473





**MAY IT PLEASE THE COURT**

1. The Respondent has advanced proposals to the Referrer in consideration of which the Referrer would withdraw its reference on the Whangarei District Proposed Plan as lodged under RMA 671/01.
2. The particular terms offered by the Respondent which have been accepted by the Referrer are as follows:
  - (i) On the withdrawal of the reference, the Respondent undertakes to ensure that consultation with the Ngararatunua Marae will occur on all resource consent applications (subdivision and land use) which consultation will include a requirement that an archaeological, cultural and historical assessment report be produced for each application. The area which is affected by this measure is as shown on the attached plan. The normal procedure of exchanging documents and comments including time-frames will be applicable as is set out in the current Council liaison protocol.

The Referrer will also be informed of all other applications outside of this area according to the Respondent's liaison protocol and will be entitled to make comments on those other applications outside of this identified area.

The Referrer commits itself to this procedure as an interim measure until the Proposed Plan Change has been approved.

- (ii) After the reference has been withdrawn a Plan Change is to be introduced when the District Plan has become operative. This will be undertaken by the Whangarei District Council with the assistance of the Referrer and the Ngati Kahu O Torongare – Te Parawhau Hapu/Iwi Trust Board.
- (iii) The Respondent will:
  - (a) Provide the services of a stenographer who will record the information provided by the Referrer in discussions with the Respondent; and



- (b) Contribute to the cost of a consultant who will formulate the information into a report suitable for the compliance of the requirements for Plan Changes in terms of the Resource Management Act 1991. This contribution will be to the maximum of \$10,000.00. Any additional funding will have to be applied for by the Referrer from other sources available to them.
  - (iv) The Referrer undertakes to provide the information required and will differentiate between the layers of processing, ie
    - (i) waahi tapu – no go areas – needs a resource consent
    - (ii) sites significant to Maori – to be controlled by performance standards – restricted discretionary resource consent
    - (iii) heritage areas of significance to Maori – needs a cultural assessment and covenants.
    - (iv) alter layer – might need a cultural assessment – Iwi to advise
    - (v) safe areas – no requirements
  - (v) The Plan Change with the abovementioned information will be publicly notified to give all affected parties an opportunity to make submissions and to be heard before the Respondent approves the Plan Change.
  - (vi) The Respondent will not withdraw the Plan Change.
3. The withdrawal of the Referrer's reference would be on the basis that all parties, including all Section 274 Resource Management Act 1991 parties, carry their own costs.
  4. Concerns have been raised about the ability of the Respondent to ensure consultation is undertaken on resource consent applications. This is raised in relation to resource consent applications for activities which are categorised as having either controlled or restricted discretionary status.
  5. It has submitted on behalf of the Respondent that this issue can be properly addressed by the Respondent in that the provisions of the Plan enable the Respondent to require of an applicant for a resource consent, even if it be for a consent having the status of either controlled or restricted discretionary, that such applicant consult with the Referrer prior to determination of the application by the Respondent.



6. The reasons for this are as follows;

- (i) In the various environment rules where provision is made for activities as either controlled or restricted discretionary activities the plan records that control is reserved over or discretion is restricted to various specified matters such including in the case of controlled activities,

“The additional matters listed in section 48.3”

and in the case of restricted discretionary activities

“The additional matters listed in Section 2.3.3”

- (ii) Section 2.3.3 of the proposed plan reads as follows,

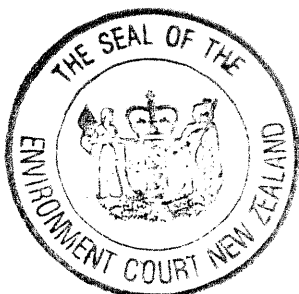
### **2.3.3 Restricted Discretionary Activities**

Restricted discretionary activities are those for which adverse effects may be avoided, remedied or mitigated by conditions of a resource consent, after considering the matters over which the council has restricted its discretion as specified in the Plan. In these cases, resource consents may be refused, or conditions imposed, only in respect of the matters to which discretion has been restricted. These matters are also relevant to the assessment of environmental effects to be supplied by the applicant for a resource consent.

In the rule tables, the right-hand column contains a list of matters to which discretion is restricted. The matters listed below are additional matters applicable to every restricted discretionary activity. They are stated here, rather than repeated in rule tables, in order to save space.

Matters to which discretion is restricted:

- a) Financial contributions in the form of money or land, or a combination of these (see Chapter 53);
- b) Bonds or covenants, or both, to ensure performance or compliance with any conditions imposed;
- c) Works or services to ensure the protection, restoration or enhancement of any natural or physical resource, including (but not limited to) the creation, extension or upgrading of services and systems, planting or replanting, or any other works or services necessary to ensure the avoidance, remediation or mitigation of adverse environmental effects;



- d) Administrative charges to be paid to the council in respect of processing applications, administration, monitoring, and supervision of resource consents, and for the carrying out of the council's functions under section 35 of the Resource Management Act 1991;
- e) The duration of a resource consent, under section 123 of the Resource Management Act 1991;
- f) Lapsing of a resource consent, under section 125 of the Resource Management Act 1991;
- g) Change and cancellation of a consent, under sections 126 and 127 of the Resource Management Act 1991;
- h) Notice that some or all conditions may be reviewed at some time in the future, under section 128 of the Resource Management Act 1991;
- i) Whether any land use or subdivision consent should attach to the land to which it relates, and be enjoyed by the owners and occupiers for the time being, under section 134 of the Resource Management Act 1991."

(iii) Section 48.3. reads as follows,

**"48.3 Additional Matters Over Which Control has been Reserved:**

The additional matters over which control has been reserved for controlled activities, .... are

- a) Financial contributions in the form of money or land, or a combination of these (refer to Chapter 53).
- b) Bonds or covenants or both, to ensure performance or compliance with any conditions imposed.
- c) Works or services to ensure the protection, restoration or enhancement of any natural or physical resource, including (but not limited to) the creation, extension or upgrading of services and systems, planting or replanting, (the protection of Significant Ecological Areas) or any other works or services necessary to ensure the avoidance, remediation or mitigation of adverse environmental effects.
- d) Administrative charges to be paid to the council in respect of processing applications, administration, monitoring and supervision of resource consents, and for the carrying out of the council's functions under section 35 of the Resource Management Act 1991.

The duration of a resource consent, under section 123 of the Resource Management Act 1991.

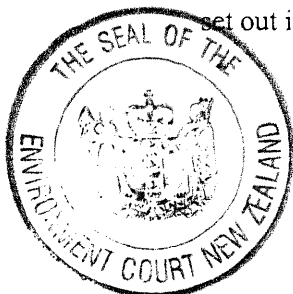


- f) Lapsing of a resource consent, under section 125 of the Resource Management Act 1991;
  - g) Change and cancellation of a consent, under sections 126 and 127 of the Resource Management Act 1991;
  - h) Notice that some or all conditions may be reviewed at some time in the future, under section 128 of the Resource Management Act 1991;
  - i) Whether any land use or subdivision consent should attach to the land to which it relates, and be enjoyed by the owners and occupiers for the time being, under section 134 of the Resource Management Act 1991.
  - j) The matters on which conditions can be imposed under section 220 of the Resource Management Act 1991. These include: esplanade reserves and strips, amalgamation of land, holding parcels in same ownership, design of structures, protection against natural hazards, filling and compacting of land, and creation or extinguishing of easements.
  - k) Consent notices to secure compliance with continuing conditions under section 221 of the Resource Management Act 1991.
- (iv) It is submitted that the Respondent has in terms of item (c) in both these provisions reserved the right to require of an applicant for a resource consent which has the status of either controlled or restricted discretionary that matters which would be of concern to the Referrer are addressed. Matters over which discretion is restricted or over which control has been reserved in requiring,

“works or services to ensure the protection, restoration or enhancement of any natural or physical resource” ... or any other works or services necessary to ensure the avoidance, remediation or mitigation of adverse environmental effects”

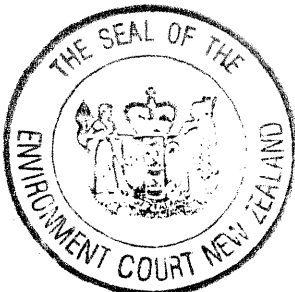
are wide enough to bring into play the provisions of Part II of the Resource Management Act. Any effect on those matters or areas which the Referrer seeks to address by the identification of sites of significance to Maori can be addressed through this provision.

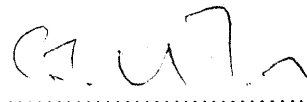
7. It is submitted that in the circumstances therefore it is open to the Respondent to require of applicants for resource consents that they comply with the matters undertaken to the Referrer as set out in clause 2(i) above.




























8. The plan/map which has been attached to this memorandum is one prepared in discussions between representatives of the Referrer and the Respondent. It differs from the documentation presented to the Court in that,
- (i) It excludes areas located in the Living 1 Environment which had previously been included within the areas shown shaded pink on the copy of Map 12 which was attached to the Referrer's submission on the proposed plan; and
  - (ii) Includes areas outside those identified on Map 12 as attached to the submission so as to incorporate the mountains of Hikurangi, Maungarei and Matarau and the Hikurangi Swamp, such being areas identified on the submission (although not described with any degree of specificity) but not shown on Map No. 12, as they are not located within the area encompassed by that map.
9. Both parties acknowledge that this plan is provisional only and has been prepared for interim working purposes. This plan is not to be seen as an acknowledgment either on the part of:
- (i) The Referrer so as to limit its ability to identify sites of significance outside the area shown on this plan; or
  - (ii) The Respondent so as to limit it in its judicial decision making processes.
10. The Respondent respectfully seeks directions from the Court in terms of this memorandum such to record the withdrawal of the reference and the commitments of the Respondent as set out herein.

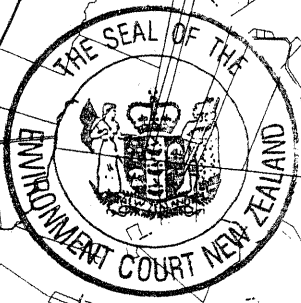
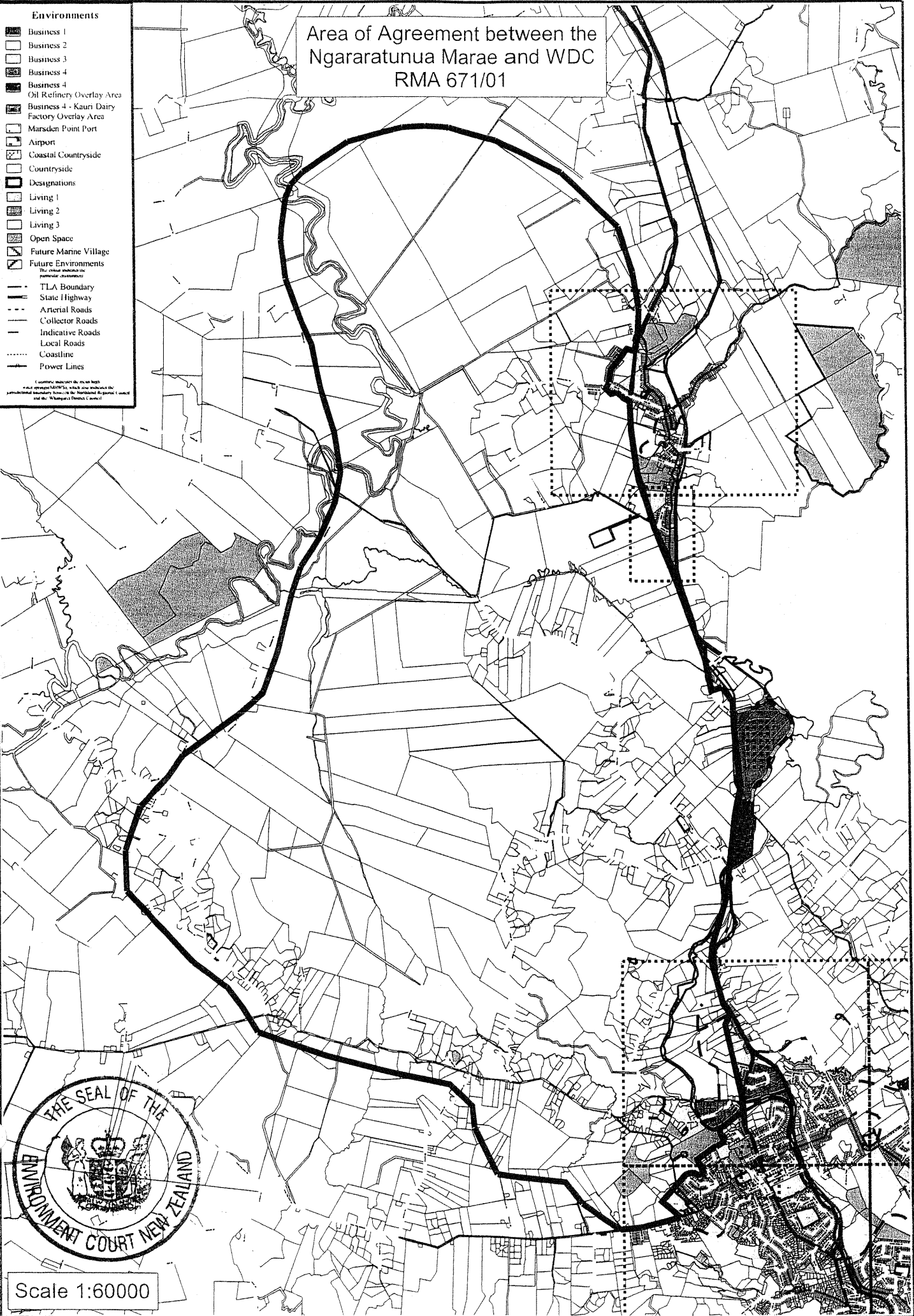
DATED at Whangarei this 26 day of February 2004



  
.....  
G.J. Mathias  
Counsel for the Respondent

# Area of Agreement between the Ngararatunua Marae and WDC RMA 671/01

- Environments**
-  Business 1
  -  Business 2
  -  Business 3
  -  Business 4
  -  Business 4
  -  Oil Refinery Overlay Area
  -  Business 4 - Kauri Dairy Factory Overlay Area
  -  Marsden Point Port
  -  Airport
  -  Coastal Countryside
  -  Countryside
  - Designations**
  -  Living 1
  -  Living 2
  -  Living 3
  -  Open Space
  -  Future Marine Village
  -  Future Environments
  - The colour indicates the potential character
  -  TLA Boundary
  -  State Highway
  -  Arterial Roads
  -  Collector Roads
  -  Indicative Roads
  -  Local Roads
  -  Coastline
  -  Power Lines
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Scale 1:60000

