



**NGATI HUARERE KI WHANGAPOUA TRUST**

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**Thames Coromandel Proposed District Plan**

**Verbal Submission by the Ngāti Huarere ki Whangapoua Trust**

***Preamble***

1. The Ngāti Huarere ki Whangapoua Trust (the Trust) would like to thank the Thames Coromandel District Council (the Council) for the opportunity to present its views on the Council's proposed District Plan (the Plan).
2. This submission is made on a 'without prejudice' basis.

***The Trust***

3. The Ngati Huarere ki Whangapoua Trust (the Trust) is an organisation that was duly established and mandated in 1998 by the Ngati Huarere ki Whangapoua iwi to act on the iwi's behalf in respect of all aspects pertaining to the tribe. This qualifies it as an iwi authority under the RMA. Ngati Huarere occupied most of the district since earliest Maori inhabitation. However in later years they were pushed back to the northern part of the peninsula by migrating tribes. Today they hold mana whenua of the Whangapoua basin. The Trust is listed in the Council's Section 35A iwi authority list and also in the operative plan as tangata whenua. The Trust has enjoyed a good working relationship with Council since it was established in 1998.

***Outline***

4. This submission will focus on three points the Trust has raised in its written submission. These are; 1) landowner property rights; and 2) the Treaty of Waitangi; and 3) iwi consultation.

***Particulars***

***Landowner property rights***

5. While the Trust supports the political intent for the review, which it understands was to create a more user friendly Plan, it holds concerns that the process has been hijacked by those who promote the ideology that 'landowners are irresponsible in how they manage their land and the community and Council want the district's amenity value to be enhanced and this is best achieved through rules and regulations restricting land use. The Trust submits that without evidence to demonstrate the Operative Plan is too permissive, Council cannot justify more a restrictive Plan.
6. Although Part 2 of the RMA requires Council to protect things such as the natural character of the coastal environment, outstanding natural features and areas of significant indigenous vegetation, in the absence of any definition in the RMA to

clarify what these subjective terms actually mean, they must be assessed in the context of the District to which the Plan relates. Council appears to be benchmarking subjective amenity values such as natural character and outstanding natural landscapes against what these values represent in other areas of New Zealand or the world. Page 5 of the Plan, under the bullet point "Overlays" states:

*"Overlays – sit above all district-wide and zone rules and are used to identify the special values of the District, which the Council and the community most want to retain. The overlays also include the matters of national importance in the RMA."*

7. The key point here is the wording "*which the Council and the community most want to retain*". The Trust acknowledges the statutory requirement for some protection but submits that the Plan must not degrade landowner property rights. If the Council chooses to place restrictions on the use of private land to benefit the community then there should be compensation in favour of the landowner. To do otherwise is allowing the community to benefit itself at the cost of some landowners. This would essentially be 'confiscation through designation without compensation'.
8. The observable fact is that there has been a net environmental gain in the district prior to, and under the operative District Plan. The current Plan is sufficient to satisfy Part 2 of the RMA. Therefore there is no basis for the tightening of controls through such means as the use of overlays like 'Areas of Natural Character'. The Trust can see no demonstrable evidence to justify further controls being imposed upon landowners. Increased restrictions will lead to increased cost and frustration that will inevitably result in a political backlash and civil disobedience in land management issues. The onus is on Council to demonstrate the need for further restrictions proposed in the Plan.
9. **Relief sought:** *Restrictions on private property are only included in the Plan with the free, prior and informed consent of the property owner.*

### ***The Treaty of Waitangi***

10. Of specific importance to the Trust is the affect the Proposed Plan will have on the ability of Maori people to exercise their right to kaitiakitanga afforded them under the Treaty of Waitangi (the Treaty) and Sections 6, 7 and 8 of the RMA. The hallmark of kaitiakitanga is protection, sustainability and management. If this is corrupted, both humans and nature are compromised. This concept is now reflected in Part 2 of the RMA. Maori, from whom kaitiakitanga originates, now have little control over its exercise. Whilst in theory Section 7 of the RMA requires all persons exercising powers and functions under it to take into account the principles of the Treaty (Section 5) and to have particular regard to kaitiakitanga, this does not occur. The Waitangi Tribunal held, after extensive analysis of the environmental arguments advanced on behalf of the WAI 55 claimants, that the RMA was inconsistent with the Treaty (*which the Tribunal also held in the Ngawha Geothermal Resource Report 1993*).
11. Article 2 of the Treaty affords all Maori the right to the undisturbed possession of their land;

*"Her Majesty the Queen of England confirms and guarantees to the Chiefs and Tribes of New Zealand and to the respective families and individuals thereof the full exclusive and undisturbed possession of their Lands and Estates Forests Fisheries and other properties*

*which they may collectively or individually possess so long as it is their wish and desire to retain the same in their possession"*

12. In the Māori text, Māori were guaranteed 'te tino rangatiratanga' or the unqualified exercise of their chieftainship over their lands, villages, and all their property and treasures. Either version gives Maori the control of their land. Council, through its Proposed District Plan is usurping that authority. Placing designations over land owned by Māori is in effect disturbing (intruding on) that ownership by placing restrictions on the use of their land, estates and forests. The Trust therefore considers this a breach of the Treaty. In recent times the High Court has ruled that Territorial Authorities are agents of the Crown in regard to Treaty issues. If the Proposed Plan is passed without recognition and accommodation of the special relationship Maori have with their land it may trigger a contemporary Treaty claim.
13. **Relief sought;** *That the Council give effect to the principles of the Treaty by acknowledging in the Proposed Plan that overlays, designations or other restrictions do not apply to land owned by Maori. (Note: in the Trusts written submission the relief sought was that the Plan give affect to the principles of the Treaty by not placing any overlays, designations or other restrictions on Māori owned ancestral land. On reflection the Trust determined that the Treaty does not distinguish between various types of Maori land ownership).*
- 14. Iwi consultation**
15. The third and most important point the Trust wishes to bring to the attention of the commissioners is centred on Council's iwi consultation process. This is a serious issue and one that I doubt the Commissioners will have encountered before. The Trust can provide evidence to support the allegations below upon request by the commissioners.
16. The Trust wishes to reaffirm its position that it considers the Māori consultation process for the preparation of the Proposed District Plan was clearly discriminatory and has significantly disadvantaged some Māori, including the Ngati Huarere people. A result of this discrimination is that Council is facilitating the creation of a subclass of Maori on the peninsula.
17. Schedule 1, [Part 1, 3(1)(d)] of the RMA requires Council to consult with affected tangata whenua in the preparation of its proposed plan through Council's section 35 listed "Iwi Authorities" [section 3B].
18. On 12 December 2012 the Thames Coromandel District Council resolved to provide \$20,000 to the districts Iwi Authorities to enter "contracts for service" with the Council, to provide comment on the Councils Draft District Plan. Ngati Huarere ki Whangapoua Trust applied for a portion of this funding but was informed by the Council that this funding is only for Iwi who are recognised by the Crown for Treaty of Waitangi settlement negotiation purposes. *(Note; The Crowns settlement process in Hauraki is also highly discriminatory and is the subject of a number of contemporary Treaty claims).*
19. In any event the Trust asserts that Crown recognition (for Treaty settlement purposes) is not a matter the Council can consider as part of its statutory obligation to consult with iwi authorities in the preparation of the Proposed Plan. Council is using criteria from one process to determine eligibility for an entirely separate and un-associated process thereby causing prejudice to Ngati Huarere and also Tamatepo,

Ngati Pu and others. *(The Trust has yet to establish how the resolution of the District Plan Committee that recommended Council enter into service level agreements with iwi became service level agreements with Crown recognised iwi authorities).*

20. For your information the Trust is currently in litigation against the Crown for its failure to exercise a duty of care in determining which iwi it will negotiate with. The Trust is of the opinion that Council has also failed in exercising a duty of care to ensure that its iwi consultation has not significantly disadvantaged some tribes. Iwi consultation should be a level playing field. It is alleged that Council's iwi consultation is in breach of the New Zealand Bill of Rights Act, which affirmed the rights of persons to freedom from discrimination (section 19); and the right to natural justice [section 27(1)].
21. Council has admitted in correspondence to the Trust that there is no additional value to be gained from the iwi it has chosen to fund over those iwi it has refused to fund. This is an interesting admission by Council as it highlights Council has implemented an inequitable system. That is, if the Crown recognises an iwi for Treaty settlement purposes, that iwi will receive funding from Council and if an iwi is not recognised for settlement purposes it will have to self fund its submission. There is no benefit to Council by funding one and not the other but Council's funding regime has clearly advantaged one over the other.
22. This discrimination is not limited to funding. The Trust requested that it be allowed to attend District Plan meetings Council held with the Crown recognised tribes. The Trust was informed that it could not attend. During one of these meetings the issue of excluded iwi was raised and there appeared to be a growing level of support for somehow including these tribes. David Taipari, a member of the District Plan Review Committee, informed the Mayor that if the Mayor or any other arm of Council formed a liaison connection with iwi outside of the Hauraki Collective group, he would see that Ngati Maru withdrew from the Iwi Liaison forum and from any other relationship with the Mayor or Council. Council has buckled to this extortion.
23. The Trust raises this serious issue to highlight the deep-rooted prejudice held by member Taipari and what influence he may have had on the Proposed Plan that will negatively impact on the excluded iwi. For example, the District Plan committee requested staff engage with iwi authorities in respect of the landscape, natural character and coastal overlay maps. The Trust was never approached to discuss these matters. It would appear this engagement was only with the Crown recognised iwi.
24. The Trust alleges that Paul Majurey, the Hauraki Collective Chairman, also of Ngati Maru and a close ally of David Taipari, also conspired to influence the District Plan in a manner that prejudiced Ngati Huarere. His report to the District Plan Review committee of the 14 May 2012 recommended that Ngati Huarere and Tamatepo be removed from the District Plans list of iwi tangata whenua. When Ngati Huarere presented to the District Plan Committee objecting to his recommendation, member Taipari stated that in his opinion "it is inappropriate to include in the District Plan an iwi that no longer existed".
25. Council's actions have not only made the Ngati Huarere people feel of lesser value than other Maori in Hauraki, they have also entrenched a Crown initiated class system. The Crown chooses "winners" and "losers" in its settlement process, or in other words a "class" system. By following the Crown's lead in recognition, Council has integrated this class system into its District Plan consultation process

automatically. Here is an excerpt from page 12 of the Waitangi Tribunal's Tamaki Makaurau Report that demonstrates how groups are marginalized within settlements:

26. *When the Crown targets for settlement the most high profile, effective group in a district, and leaves out the other tangata whenua groups, it reinforces the view that they matter less. When the Crown keeps doing it (in Auckland, Ngati Whatua o Orakei has now been chosen four times), that implication is even stronger. When the winners are picked out, they feel and act more like winners. This can leave the other tangata whenua groups in the district feeling like losers. They can feel that they have been relegated to a class of also-rans. Suspicion and resentment are the natural result.*
  27. In summary; The Ngati Huarere people have been significantly disadvantaged in Councils process of preparing the Proposed Plan by 1) being denied resources that were afforded other iwi authorities; and 2) by being refused attendance to iwi liaison meetings where Proposed Plan matters were discussed; and 3) by being denied the ability to hear other iwi authorities views and to voice their own views on matters discussed; and 4) by allowing a traditional adversary of Ngati Huarere to influence the District Plan Review Committee in a manner that prejudicially affected Ngati Huarere.
  28. **Relief sought;** *Ngati Huarere requests Council explain how it will correct this injustice. Denial is not an option. Ngati Huarere require a highlighted statement included in the District Plan that states that Crown recognition of iwi has no standing in the Plan. In any event the Trust asserts that Council must begin its Maori consultation again. This time the process must be inclusive not exclusive*
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