Appeal

Ngāti Kuia
Te Iwi Pakohe

Date: 8 May 2020

To: The Registrar
Environment Court
Christchurch

We, Te Runanga o Ngati Kuia Trust (TRONK) appeal against part of a decision of Marlborough District Council on the combined Marlborough Environment Plan (MEP).

We made a submission on the plan and the matters covered by the points raised in the appeal.

We received notice of the decision on 3 March 2020.

The decision was made by Marlborough District Council (MDC).

Contact for service: Julia Eason, Taiao Planner; Julia@ngatikuia.iwi.nz.

We are open to engaging in mediation on the matters outlined in the appeal.

Background

1. Ngati Kuia are Tangata Whenua of Te Tau ihu and are the oldest iwi in the Marlborough District Boundary. TRONK have an obligation to advocate for the interest of our beneficiaries being the registered members of the Trust and those who may now or in the future be eligible to register with the iwi.
2. We appeal minor aspects of the (Proposed) Marlborough Environment Plan (The Plan) which relate to;
    a. The rules and definitions for Papakainga and Papakainga units.
    b. The definition of Maori Land.
    c. The definition and appendices of (cultural) Sites of Significance to Maori/iwi.
    d. The map of exclusions for the discharge of human waste to the Coastal Marine Area.

3. Ngati Kuia along with the other iwi of Te Tau ihu were engaged by Council to "identify issues of Significance to iwi". These are found in Volume 1 Chapter 3 (Marlborough's Tangata Whenua Iwi) of the plan. This chapter was finalised in 2014.
4. Iwi signed the deed of Settlement in 2010, the settlement legislation came in to effect in 2014. The plan was notified in 2016. Financial redress to Ngati Kuia was completed in 2019. Hearings on the plan have been held from December 2017 to mid-2019.
5. Iwi have a special role in developing plans as treaty partners that is above that of the general public.
6. Section 8 of the Resource Management Act (1991) states;

    "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 take into account the <u>principles</u> of the Treaty of Waitangi (Te Tiriti o Waitangi)."

7. The principles of the treaty include that of active protection of Iwi interests. Iwi raised concerns during the hearing process and engaged as best they could during the earlier consultation in good faith. The Marlborough District Council is an agent of the Crown. Whereas the general public hold their own burden of advocating for their own interests, in the case of iwi, that burden shifts towards the Crown and its agents. It was therefore the responsibility of the Council to facilitate a solution to the issue rather than rely on any individual iwi to provide a pan-iwi solution.
8. Between the period from the final draft of Chapter 3 and subsequent public notification of the plan, substantial legislative changes occurred. The plan was no longer current in addressing the issues and needs of iwi within the region.
9. Our original submission covered matters including the use of cross referencing for rules and methods to achieve the Policies and Objectives of Chapters 3; the delay in the formation of Chapter 3 to notification and, the contradiction between Issues raised in Chapter 3 and rules

in other chapters. Our submission was generally supportive of the content of Chapter 3 but concerned that its content did not follow through to the other chapters.

10. We gave further evidence to the points of our submission at the first hearing in December 2017. In general, the matters raised included integration of Chapter 3 through the rest of the plan; the need for this to be done through iwi consensus and a clear line of sight between the levels of the plan. Our submission and evidence were not always specific to the changes in wording required as this would simply have been too much work for iwi to do when the burden lies with the Council. Also, it is desired that all iwi were to build consensus on particular matters which could not be done without Council involvement as they are responsible for the writing of the plan. As the relief sought in submission required such consensus, the submission could not fit the format requested by the Council.
11. We therefore, submitted on all of the plan. But also made submissions of the relevant Objectives and Policies, attempting to retain a holistic view of the relationship to Chapter 3.

The parts of the decision we are appealing are:

Volume 2 (Rules) Chapters 3-5 and 7-8.

12. Existing Standards 3.3.487.1, 4.3.45.1, 5.3.3.1, 7.3.3.1 and 8.3.3.1 for papakainga permitted activities
13. New Standards X.X.X.4 and .5 For all Papakainga Permitted activities (Inclusion)

Volume 2 (Definitions) Chapter 25

14. The definition of Papkainga (pg, 20)
15. The definition of Papakainga unit. (pg, 21)
16. The definition of Settlement Land (Inclusion)
17. The definition of Sites of significance to iwi (Pg, 29)

Volume 4 (Maps)

18. The content of the new overlay ‘Restricted Area for Discharges from Ships’ (no reference given)

The reasons for our Appeal

Papakainga

19. The relevant existing provisions of the plan are standards;

    i. 3.3.487.1, 4.3.45.1, 5.3.3.1, 7.3.3.1 and 8.3.3.1 with the inclusion of two new standards .4 and .5.
    ii. The addition of permitted standards in to Chapter 6.
    iii. A new definition for Settlement Land.

20. In making their decision, the Council altered the definition of Papakainga and created a new definition for Papakainga unit. These are in the appendix for your ease however, you will note that the definition for Papakianga unit was made into the definition for Papakainga which does make sense with some modification needed. The definition for Papakainga unit was then written anew to represent a self-contained residential building. This is inconsistent with what would be expected of a papakainga which emphasises the use of shared facilities. We state the definition is unhelpful and should be removed entirely or; the references to ‘self-contained’ and ‘residential’ are removed therefore, allowing for a wider range of anticipated activities we reasonably expect would occur.

21. Our original submission was light on many matters due to time constraints and the complexity and size of the document however, we did state *“The issues 3A to 3F have not been carried through the document to be consistent with the objectives and policies in the other chapters. The issues relating to governance and Kaitiaki being 3G to 3J appear to be undermined by the policies further in the document and associated rules permitting certain high risk activities.”* Our further evidence built on that statement in reference to Papakainga and is **attached**.

22. The Issue 3F *"The Provision of papakainga"*

> *In Marlborough, particular iwi and/or whānau retain culturally significant tracts of land, for example in the Marlborough Sounds and in the vicinity of Wairau Pā. This land is held in multiple ownership of iwi or whānau members and in most cases has not been developed, or has only been developed in a minimal way by the owners. Even so, Māori have a special spiritual and cultural attachment to this land, which is described as Māori land in terms of the Te Ture Whenua Māori Act 1993. Additionally, some land returned to iwi through settlement processes and in freehold title is regarded by Marlborough's tangata whenua iwi as Māori land. There are tribal or whānau aspirations to exercise rangatiratanga over Māori land to use this land resource for the betterment of whānau or iwi members. In particular, there is a strong desire among Marlborough's tangata whenua iwi to provide papakāinga. This could be the provision of a single or small number of houses for whānau or iwi members, through to small settlements involving kaumātua housing, kōhanga reo, cottage industries, places of worship and marae. Marlborough's tangata whenua iwi wish to have the freedom to establish papakāinga activities on Māori land to meet the housing and social needs of iwi members. The intention is to improve the quality of life of whānau and iwi in a manner consistent with their cultural values and customs. In seeking the ability to adequately house and sustain iwi and whānau members, Marlborough's tangata whenua iwi recognise that papakāinga must be developed in a manner that is consistent with the surrounding environment. In particular, that the physical needs of the settlement, in terms of water supply and waste disposal, should be met without adverse effects on the environment.*

(My emphasis added) further explains what is anticipated within a papakianga. The decision of the Council on the definitions and standards for papakainga and definition of Maori Land

are inconsistent with the explanation provided at 3F and do not assist in addressing the issues of housing and productive use of Maori owned land. The relevant objective is 3.5 which also supports wider freedom of uses on affected land.

> ***Objective 3.5 – Opportunities for development on Māori land that meet the needs of the landowners and respects the relationship of Marlborough's tangata whenua iwi with land, water, significant sites and wāaahi tapu.*** *Planning policies and rules within former resource management plans have potentially limited how Marlborough's tangata whenua iwi have been able to use their own land. The objective therefore aims to maintain and strengthen the traditional relationship of Marlborough's tangata whenua iwi with land, water, significant sites and wāaahi tapu by enabling a range of activities to occur on Māori land, including papakāinga, marae cultural activities, customary use and other activities. This approach will support economic, social and cultural development for Marlborough's tangata whenua iwi. This objective also assists in giving effect to the principles of the Treaty of Waitangi/Te Tiriti o Waitangi and to Section 6(e) of the RMA.*

23. The connection to a Marae or residential facility is generally acceptable however, replacing residential activity with accommodation provision would better reflect the casual use of some facilities.
24. At a practical level, there are already checks and balances in place to manage the land occupation orders through the Maori Land Court and further regulation of this through the MEP would not achieve the purposes for which these lands were set aside as reserves or returned to Maori as SILNA blocks. Some blocks are small ¼ acre sections while others are hundreds of hectares within the same zone. The current proposals are not reflective of these realities.

25. A solution could be the use of the newly created Maori purpose zone developed in the new Template plan. This could create specific rules proposed for areas of Maori land that better reflects the reality of Maori land in the region while still maintaining the environmental protection of the general rules. An overlay could also function in the same way and give landowners greater clarity and security that their interests are protected.
26. The current definitions also prevent land returned through the treaty settlement process from being a permitted activity, even if all the structures are already in place such as the Ngati Kuia cultural property at Titiraukawa. Although this site has existing use rights, similar developments or change of use at other redress sites would require consent as a discretionary activity since they are on land owned by iwi settlement entities rather than individuals.
27. We are therefore seeking inclusion of iwi settlement lands in the permitted activity classification, and an associated definition.
28. The rules for permitted papakainga activity are generally acceptable except the limit of five units. There is no reason for the limitation except that this is near to the status quo at existing papakainga in 2010. We propose the rules are amended to allow up to 20 units per papakainga, plus a facility building/s such as Whare Kai, Whare Tangata and ablutions as this would better reflect the needs of whanau.

Heritage

29. Heritage matters are addressed in Chapter 10 and also at Issue 3C (Chapter 3) of the Plan. We submitted on 6 points in our original submission and gave further evidence on this topic at the Topic 2 hearing in addressing Issue 3C. A contradiction exists between Issue 3C "Threats to the cultural values of Marlborough's Tangata Whenua iwi", and its supporting policy 3.1.4 *(c) sites places, areas and landscapes of historic and/or cultural significance;* which encourages sites to be recognised in iwi management plans, with the definition for

‘sites of significance to iwi’ which states that sites are only those listed in Schedule 3 of Appendix 13.

30. We are recommending a change of the definition will achieve the intent of Issue 3C and its supporting policies while removing the contradiction. It will also ensure the definition is more in line with other legislation including the Heritage New Zealand Pouhere Taonga Act 2014.
31. The general drive of the plan, as released, is for sites to be listed in an appendix to the plan in order to be protected. There are many sites of significance to iwi which have been damaged as a result of either land use activities or deliberate scavenging for artefacts. Therefore, listing sites has led to damage rather than protection. The method of listing is ineffective in most cases.
32. It is our understanding that the identification of sites of significance to Maori/iwi is dealt with outside of the plan and that information is held by iwi. Protection therefore is better achieved by removing the limiting reference in the definitions for sites of significance and moving the requirement to protect such sites on to applicants in preparing applications and meeting the requirements of section 88.
33. Iwi have undertaken extensive research on sites of significance during the treaty settlement process and have potentially hundreds of sites which have been identified and mapped. Very few of these are in appendix 13. Sites are also identified through the Archsite database and other public records. Relying solely on a separate plan list is not as effective or adaptable as using the existing identification mechanisms and, effectively excludes these other forms of recording the information.

Coastal Discharges

34. In our original submission, we opposed the discharge of any human waste to the Coastal Marine Area (CMA) with the exception of significant infrastructure. The Marlborough Sounds are often enclosed bays whereby waste can move in various directions, is not washed out to

sea and could accumulate, resulting in contamination and risks to human health, particularly Mahinga Kai.

35. We agree that having a map of excluded areas is a suitable method for addressing the issues however, this overlay was not part of the notified plan and iwi have not been consulted on the appropriateness of the exclusion areas.
36. We therefore ask the Environment Court for the following relief.

Relief Sought

1. The definition of Papakainga Unit is changed to;
    a. **Papakāinga unit**; means a residential dwelling or work place, used or intended to be used for residential and/or living activities, located on Māori land or land obtained through treaty settlement legislation and owned by iwi entities.

2. That the definition of Papakainga is replaced with the following definition.
    a. **Papakainga**; means the use and occupancy of land and buildings in accordance with the principles of tikanga and kaitiakitanga. It may involve the development of the land for both living and working.
    b. Papakāinga development can only occur on land that is either Maori Land or, vested in a Trust whose authority is defined in a Trust Order or other empowering instrument which ensures that the occupancy of the land complies with the requirements of the Maori Land Court if applicable and, the possession and/or beneficial interest on the land is restricted to the beneficiaries of the Maori or iwi Trust.

3. That the permitted activity standards .1 for Papakainga in Urban Chapters 3, 4 and 5 be ammended to include 20 units and that standards .4 and .5 be added to provide for appropriate activities as below;

(Urban Papakainga) Permitted Activity Standards. A traditional Māori settlement area on Māori land <u>or land obtained through treaty settlement legislation.</u>

X.X.XX.1. A maximum of ~~five~~ 20 papakāinga units are permitted on a Computer Register Record of Title.

X.X.XX.2. A minimum land area of 80m2 must be provided for each papakāinga unit.

X.X.XX.3. Any setbacks required under Standards 3.2.1.4 to 3.2.1.10 (inclusive) or Standards 3.2.1.12 to 3.2.1.14 (inclusive) are to the external boundary of the property site and do not apply between units on the site.

X.X.XX.4. Includes activities listed below and associated with residential facilities.

Māori cultural activities; and

community activities; and

commercial activities; and

education activities; and

healthcare activities; and

office activities.

X.X.XX.5. Where conflict exists, the above provisions shall prevail.

4. That Chapter 6 includes Papakainga as a permitted activity with the same standards as Chapters 3, 4 and 5 but with a change to standard 2 requiring a higher minimum site area per unit as agreed to between Council and iwi.

5. That the Permitted Activity Standards for Papakainga in Chapters 7 and 8 be amended to;

(Rural Papakainga) Permitted Activity Standards. A traditional Māori settlement area on Māori land <u>or land obtained through treaty settlement legislation.</u>

X.X.XX.1. A maximum of ~~five~~ 20 papakāinga units are permitted on a Computer Register Record of Title.

X.X.XX.2. A minimum land area of 80m2 must be provided for each papakāinga unit. 3

X.X.XX.3. Any setbacks required under Standards 3.2.1.4 to 3.2.1.10 (inclusive) or Standards 3.2.1.12 to 3.2.1.14 (inclusive) are to the external boundary of the property site and do not apply between units on the site.

X.X.XX.4. Includes activities listed below and associated with residential facilities.

Māori cultural activities; and

community activities; and

commercial activities; and

education activities; and

healthcare activities; and

office activities; and

Rural activities.

X.X.XX.5. Where conflict exists, the above provisions shall prevail.

6. That the requirement for sites of significance to iwi be listed by Council in Appendix 13 Schedule 3 be replaced with;

Sites of Significance to Maori/ iwi; means sites that have been identified by iwi through consultation or official recording and publication of such sites.

7. That a definition for Settlement land be included.

Settlement land; Means land obtained through treaty settlement legislation.

8. That the Marlborough District Council be required to consult with Marlborough's Tangata Whenua on the overlay map 'Restricted Areas for Discharges from Ships' and that an agreed map be retuned to the Court for approval.

Appendix

Rules:

(Prohibited) 16.7.23. From 9 June 2022, the discharge of human sewage, except Grade A or B treated sewerage, from a ship within ~~1000m~~ 750m of MHWS or into the coastal marine area identified as a Restricted Area for Discharges from Ships.

(Prohibited) 16.7.45. Discharge of treated or untreated human sewage from land-based activities into the coastal marine area, except for the discharge of treated human sewage from regionally significant infrastructure.

3.3.4748. Papakāinga. (Rural Zone) (Permitted)

3.3.487.1. A maximum of five papakāinga units are permitted on a Computer Register Record of Title.
3.3.487.2. A minimum land area of 80m2 must be provided for each papakāinga unit.
3.3.487.3. Any setbacks required under Standards 3.2.1.4 to 3.2.1.10 (inclusive) or Standards 3.2.1.12 to 3.2.1.14 (inclusive) are to the external boundary of the property site and do not apply between units on the site.

Definitions:

Papakāinga; means a traditional Māori settlement area on Māori land and includes activities associated with residential living.

Papakāinga unit; ~~means a traditional Māori settlement area on Māori land and includes activities associated with residential living.~~ means a self-contained residential unit or units, used or intended to be used for residential activity, located on Māori land and associated with a marae or tribal housing.

Site of significance to Marlborough's tangata whenua iwi; as identified in Schedule 3 of Appendix 13

Maori Land; Māori land means Māori customary land and Māori freehold land, as defined in Section 4 of Te Ture Whenua Māori Act 1993

List of Attachments

The Original submission - 1 September 2016

Evidence of Raymond Smith on Papakainga – 20 November 2017

Evidence of Julia Eason on contradictions in the plan including heritage – 9 November 2017

Evidence of Julia Eason on Topic 11 – Coastal Marine Area, relates to discharges and heritage matters.

NGĀTI KUIA
Te Iwi Pakohe

Resource Management/Te Taiao Unit

www.ngatikuia.iwi.nz

1 September 2016

In the matter of: the Proposed Marlborough Environment Plan (MEP)

Submitter: Te Runanga o Ngāti Kuia Trust (TRONK)

Position: Support and Oppose certain Objectives and Policies

Submission: We wish to speak in support of our submission

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Background

Ngati Kuia have been engaged by Marlborough District Council (MDC) to advise on the content of Chapter 3 'Marlborough's tangata whenua iwi'. The issues 3A to 3F have not been carried through the document to be consistent with the objectives and policies in the other chapters. The issues relating to governance and Kaitiaki being 3G to 3J appear to be undermined by the policies further in the document and associated rules permitting certain high risk activities.

Ngati Kuia support the principles of Chapter 3 of the Proposed Plan, particularly the expectation that an application will consult with iwi when iwi are affected. Unfortunately many activities that affect iwi are permitted within the plan or simply not identified and therefore no consultation is realistically expected.

The process that has been followed in forming the remaining chapters of the plan has not been done in accordance with the principles of the Treaty of Waitangi (Issues 3G, 3H Objective 3.1, 3.2, 3.3 and 3.5; Policy 3.1.1 (a-e)). For a proper consultation process to have been followed, all iwi would have been involved in the formation of objectives and policies across all the chapters of the document and none would have felt a requirement to submit in opposition to any aspect of the plan as it was notified. Iwi would have been fully informed of the progress of the Plan and had the opportunity to comment or provide feedback on all proposed objectives, policies and rules. This would be consistent with the approach of Nelson City Council who are reviewing their RPS with the full consultation and co-operation of all 8 TTI iwi. The process followed by MDC is disappointing in hindsight.

As a result, there is a lack of particular objectives and policies that should have been included in the plan including but by no means limited to, land disturbance adjacent to or affecting a Statutory Acknowledgement Area (SAA). This is particularly concerning regarding the prevalence of registered and identified archaeological and heritage sites along the coast, on islands and adjacent to waterways. The identification of significant cultural landscapes has not been addressed. The restoration of important marine and freshwater ecosystems has not been discussed. How Mauri of waterways is to be assessed and measured and affected is light. The plan puts emphasis on 'encouraging' and 'promoting' good land practices but does not 'require' them. Iwi values identified in Chapter 3 are stronger than the policies and rules in other chapters of the plan but, this should not be the case.

Our Submission relates to

All of the proposed Plan – particularly Volume 1

Volume 1 (Objectives and Policies) We are opposed to all of the proposed plan but do support some specific objectives and policies.

Volume 2 (Rules) does not reflect the objectives and policies of Volume 1, particularly Chapter 3 and therefore we oppose volume 2 in its entirety.

Volume 3 (Appendices) fails to identify cultural values in most aspects including any water quality classifications. This is a failure of the plan structure as chapter 3 values should have been included. Ngati Kuia oppose all of Volume 3.

Volume 4 (Maps) fails to identify culturally significant areas including but not limited to a cultural overlay. Statutory Acknowledgement Areas should be included in the Plan as part of integrated management. We oppose parts of Volume 4 based on the missing information and overlays.

Hearing

We wish to speak in support of our submission

Specific parts of the proposed plan of our submission

Volume 1 - Chapter 5

Issue 5B is generally supported however the damming of a waterway compromises the mauri of a resource. **Policy 5.2.2** is supported however, Iwi have not been consulted on the setting of flows and levels as set out in Volume 3 appendix 6 and therefore must oppose the limits set as being insufficient in maintaining mauri. This is mirrored in **policy 5.2.4**.

Policies 5.2.7 and 5.2.9 seems unrealistic to police.

Policy 5.2.15 is supported. **Policy 5.2.18** is supported

Policy 5.2.19 include as a consideration, the mixing of waters.

Policy 5.2.21 (damming) firstly no new structures should be permitted on any waterways. As a priority, must consider any alternatives with less adverse effects on mauri and instream values.

Policy 5.2.22 include 'the degradation of Mauri' as a consideration and 'the way in which the structure would be removed at the end of the consent term'.

Policies 5.2.24 and 5.2.25 are supported

Policy 5.3.1 include '(a) mauri and instream including human use values; then' then supported

Policy 5.3.3 is supported

Policy 5.3.6 (allocation) in line with the national direction from the Iwi Leaders Group (ILG) 20% of the total allocation of freshwater should be set aside for iwi. Should the iwi choose not to extract that water, it would remain in the waterway to protect instream values. This enable iwi to exercise Kaitiakitanga as per **Issues 3A and 3B.**

Policy 5.2.16 is opposed and is considered to be based on unfounded information. The effects of Climate Change exacerbated by deforestation and pastoral land uses should be offset by afforestation. Forestry regulates water flows in both high and low rainfall situations and the carbon sink would assist in the long term reduction of the effects of global warming and the associated changes in rainfall patterns.

Policies 5.4.4 and 5.4.5 are opposed as assisting the practice of water being traded on an open market to the financial benefit of the existing permit holder without consideration of the loss in public benefit as a result. This is an unconstitutional behaviour whereby the public good is eroded for private economic gain. This would further reduce the reliability of water and hasten the enforcement of low flow cut offs which in turn, will likely result in lower flows in treasured waterways than currently experienced. If this policy id to be approved, the low flows of waterways will need to be lifted to preserve instream values. Although the system may be considered efficient and effective, it is not considered equitable in its current form.

Policy 5.9.1 appears to contradict the anticipated outcomes of the above policies and is therefore ineffective however, iwi support and equitable allocation after an iwi allocation has been set aside.

Policy 5.10.2 should mooring areas be established, iwi should have a portion of space set aside for iwi use. **Policy 5.10.6 (d)** should include iwi trust. The reasons being that the treaty did not include the handing over of coastal areas to be governed by the crown and therefore iwi have never relinquished their rights to the CMA.

Chapter 6

Policy 6.1.5 include the level of Mauri through a cultural health assessment.

Policy 6.2.3 oppose as the policy should seek to protect all remaining natural character. No further degradation should be considered appropriate.

Policy 6.2.5 Oppose. The fact that an area has already been the subject of degradation should not justify more of the same. Again all existing natural character should be maintained and wherever possible, enhanced.

Policy 6.2.8 is supported however the setbacks should include farming activities including riparian distances. This could be considered contrary to the policy above that encourages development where areas are already modified. Ngati Kuia suggest the word development be replaced with maintenance.

Chapter 7

Policy 7.1.1 and 7.1.2 need to include cultural values and landscapes which have not been assessed or included in the assessment criteria of **Volume 3 Appendix 1.**

Policy 7.2.7 as it relates to the Marlborough Sounds is supported, particularly the requirements of (b).

Chapter 8

Objective 8.2 is supported, **Policy 8.1.1** should have included 'cultural and Kaitiaki values'.

Policy 8.2.6 is supported

Policy 8.2.7 relates to the Councils regional pest management Plan. Iwi have not been invited to input in to the latest review of the plan which should have been undertaken in accordance with LGA requirements.

Policy 8.2.9 should include 'kaitiaki'

Policy 8.2.11 is supported and should be a consideration for all land use and subdivision consent applications.

Policies 8.3.5, 8.3.7 and 8.3.8 are supported, particularly at (e) 'no net loss'

Chapter 9

Policy 9.1.1 should include '(f) conservation land'

Policy 9.1.9 is supported and should have reference to legal roads.

Policy 9.1.15 in its current form does not hold much weight and it is recommended that for public access to be improved, it should reflect an obligation to 'improve safe access over unformed legal road'.

Policy 9.1.17 (c) 'other reserve land' should be replaced with 'other public land'

Policy 9.2.1 (c) is supported and should require consultation in order for the Council or an applicant understand where access may be restricted in the best interests of the environment or cultural values. This may also be appropriate when dealing with protecting fish spawning areas etc.

Chapter 10

This chapter does not include a relevant Issue or objective to protect undiscovered or unregistered sites of significance to iwi. This is particularly pertinent when referencing **Volume 3 Appendix 13** with very few iwi sites listed although they make up the majority of registered sites in Marlborough.

To protect the majority of Maori heritage in Marlborough, land disturbance on, near, or affecting the coastal environment and waterways and their margins should be restricted and iwi consultation required.

Policy 10.1.3 is generally supported in principle however, Council has not engaged iwi to identify special or significant places for protection. In addition, there are other places to be protected that may not be accurately identified.

Policy 10.1.4 (e) 'and' should be replaced with 'or'. As Maori sites of significance are unlikely to be located in an area described in (f). Karaka point as an example.

The formation of a schedule of heritage resources should also reference any current or future iwi management plans.

Policy 10.1.8 the word 'registered' should be replaced with 'identified' to allow for sites to be identified through an iwi management plan. Another list requirement should be 'the use of iwi monitors to identify or avoid adverse effects on iwi values prior to, during and after the works'.

Policy 10.1.9 is opposed as the Council should provide information to applicants regarding the presence of archaeological sites so a full assessment of effects can be identified.

Policy 10.1.11 appears to guide Council to undertake work that would have been better undertaken prior to the notification of the plan as the rules in the plan do not reflect the ability of council to now restrict land uses in those places. These sites could have been generally mapped as high likelihood sites. The permitted activity rules for land disturbance do not reflect the intent of this policy. Ngati Kuia support the intent of the policy but it must follow on to the rules in each zone of the plan.

Chapter 11

Policies 11.1.3, 11.1.5 and 11.1.6 are generally opposed as there is no requirement for consultation in SA rivers and waterways. The activities can be contrary to protecting Mauri of those waterways. Any river works will have adverse ecological values

Chapter 13

Policy 13.2.5 (b) remove the word 'where necessary' (l) include the words 'non-heritage' otherwise support this policy

Policy 13.2.6 this should include a requirement to consult in order to determine the attributes of the area.

Issue 13C Ngati Kuia strongly agree that fish stock depletion is a significant issue and the role of commercial and recreational fishing activities on fisheries sustainable. An additional policy should be included 'the protection of fish spawning areas from degradation'.

Policy 13.6.1 (a) should include 'except in ecologically significant or restoration areas'

Policy 13.10.11 should include (d) alternative locations with less adverse effects.

Objective 13.12a should be indicated that the disposal of material in to the MA should be "prevented but if that is not achievable, minimised'.

Policy 13.12.1 should remove the reference to 'or other material'.

Policy 13.13.1 replace the word 'little' with 'no more than temporary'.

Policy 13.13.6 remove the word 'realignment'.

Policy 13.13.7 should include as a requirement 'the iwi have been consulted'.

Policy 13.16.2 should include reference to other iwi.

Policy 13.18.2 replace the word 'effluent' with 'any waste'

Policy 13.18.5 should make reference to Accidental Discovery protocols.

Policy 13.18.7(g) should include ecological and heritage values

Chapter 14

Policy 14.1.10 is contrary to natural coastal processes.

Policy 14.3.1 should include (c) Home occupations.

Chapter 15

Issue 15C is supported but there should be an objective relating to achieving swimmable water quality and drinkable in identified areas.

Policy 15.1.9 is opposed in full on principle that point source discharges of contaminants are contrary to good management practice and should all be phased out in favour of land based waste management.

Policy 15.1.12 is opposed as it suggests point source discharges are appropriate.

Policy 15.1.15 there should not be a exception for stormwater discharges.

Policy 15.1.16(c) discharges that do not meet the standards should not be approved at all.

Policy 15.1.18 replace the word 'avoid' with 'prohibit'

Policy 15.1.19 should refer to <u>treated</u> human sewage.

Policy 15.1.22 is opposed in full. It is fair to expect council infrastructure can and should be improved to mitigate the adverse effects of urban development and land uses which are increasingly harmful to aquatic life.

Policy 15.1.23 should include river beds 'and margins'. **(b)** replace 'intensively' with 'all'.

Policy 15.1.27 replace the word 'promote' with 'require'.

Policy 15.3.5(a) is opposed. No industrial waste should be permitted on the grounds of an arbitrary notion of 'minor' adverse effects.

Chapter 16

Policy 16.3.3 is opposed. A policy should not direct an application for consent to be granted. **(b)** would be another requirement that would be very difficult to police.

Chapter 19

There should be a policy enabling the installation, operation and utilisation of alternative energy sources that do not release greenhouse gasses.

Another policy should promote and enable afforestation both commercial and conservation planting.

Policy 19.2.2 should be more conservative and allow for 1 metre of sea level rise over the next 100 years.

Appendices.

A5 regardless of the cultural values iwi place on their key waterways, only one waterway has been given a cultural value in Appendix 5. Statutory acknowledgements are a starting point for identifying culturally significant sites with Pelorus Bridge having high values for locals, iwi and visitors alike. Iwi were not consulted in identifying – or not, significant waterways on cultural grounds. Council should consult with iwi to identify culturally significant waterways.

A6 iwi have not been consulted in assessing the total allocations and low flows of waterways which goes against protecting Mauri. The low flows are too low and in association with the assisted transfer of water proposed in the Plan, will be significantly more likely to result in ecological collapse of key waterways and Marlborough will experience significant adverse effects of harsh drought.

A13 Very few iwi sites have been considered significant with by far the majority of heritage sites being pakeha, regardless of the fact that the majority of archaeological sites in Marlborough are Māori. There are numerous other sites in Marlborough that would be as significant but Council has not sought to identify those while drafting the Plan.

A22 Should require (10) proof of consultation with relevant iwi and protection of their values.

A25 Iwi have not been consulted in identifying pest plants through either the plan or the Marlborough Pest management plan review.

Signed:

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Raymond Smith on behalf of Te Runanga o Ngāti Kuia

Taiao/Environmental Unit – File Note

20 November 2017

Subject: MEP Hearing – Papakainga and Marae

Who: Raymond Smith

Mihi mihi,

Brief history of association of Ngati Kuia in Marlborough – 700 years.

Today we are discussing Chapter 3 of the proposed MEP and I am here to talk to the matters of Marae and Papakainga. Our original submission did not discuss these matters for the reasons stated in that submission around the need to address objectives and policies prior to addressing the rules.

As the issue is directly related to Issue 3F, Supporting objective 3.4 and Policies 3.1.3(e) and 3.1.6, it is worth discussing in this context.

The current wording of the definitions of these activities is restrictive as to what land would be subject to the permitted activity status. The Marae sites are listed by legal description which is limiting to expansion of these cultural sites. Papakainga is restrictive to residential activities which does not reflect current use. Further restriction comes from the term 'Māori land' and what the Council means by this.

Ngati Kuia through settlement, received cultural redress properties and commercial properties that are suitable for papakainga for various reasons including location, facilities and resources. The definition of what land is suitable needs to be further discussed.

In summary, the IWG discussed these provisions but did not reach a consensus position. By limiting the land and activities to which these permitted activity status applies, does not achieve Objective 3.4 *"Opportunities for development on Māori Land that meet the needs of the landowners and respects the relationship of Marlborough's Tangata Whenua iwi with land, water, significant sites and wāahi tapu."*

The Council should allow the development of Marae and papakainga on all settlement and Māori land in order to achieve the potential of that land for the cultural, social and economic well-being of Marlborough's resident iwi. These developments can be subject to environmental effects based standards that protect the health and safety of people and the environment and should allow for alternative, innovative solutions over prescriptive standard provisions.

9 November 2017

1. My name is Julia Eason, I hold a Bachelors degree in Environmental Management and Planning from Lincoln University. I am employed fulltime by Te Rūnanga o Ngāti Kuia as a Taiao assistant/planner responsible for presenting the views and interests of Ngāti Kuia through the New Zealand statutory environmental management framework. My evidence will briefly cover the formation of Chapter 3, the position and concerns of Ngāti Kuia by expanding on the reasoning of our original submission, the issues that arise in addressing these concerns as they relate to the structure of the PMEP, the obligations on the council in having regard for our concerns, and methods for addressing these concerns.
2. An executive summary of this evidence is as follows. The Iwi were participants in the Iwi Working group set up in 2007 to identify the issues of significance to iwi. The final 'Tāngata whenua' Chapter was agreed by the iwi and Council in 2014 and notified in mid-2016. The iwi support the content of Chapter 3 as agreed by the iwi in 2014 and accept that minor amendments are required to bring it up to date. The original submission on the MEP in September 2016 raised fundamental issues that could not be addressed in the format summarised by the Council. The issues raised were fundamentally structural matters which the panel are now in a position to address. We can give suggestions as to how the panel may choose to address these issues and we are willing to continue to engage with the Council to assist in developing a workable and effective plan.
3. Chapter 3 "Marlborough's Tāngata Whenua" was developed by an iwi working group over seven years of hui and discussions being finalised in 2014. During the time of developing the contents of the chapter, significant changes have occurred to the iwi of Marlborough that alters the context of iwi in the region. All iwi of Te Tauihu completed Treaty of Waitangi negotiations and agreed to three components of settlement. The apology, financial redress and cultural redress. Ngāti Kuia received

the apology from the Crown at Te Hora marae on 26 October 2010. Cultural and Financial settlement were initiated in 2014 and proper resourcing of a Taiao/RM unit in 2015. By that time, the Chapter was complete but already out of date.

4. Ngāti Kuia has a deed of settlement in excess of 1500 pages which is available to the panel. These deeds are in effect, an account of the post treaty breaches of the Crown toward the affected iwi however, the deeds are also an account of association to resources and places through whakapapa, iwi historian accounts, Crown and general records. The Settlement Act, which was given royal ascent in 2014, identifies particular resources of interest to this Plan. Namely the Act requires the Council to consider Ngāti Kuia as affected parties for any RMA activities, especially resource consent applications on Te Hoiere (Pelorus River and Sounds), and its tributaries, Kaituna awa and the entire Coastal Marine Area (CMA). Other land based sites are also given the same degree of association and include landscape features such as Parororangi (Mount Stokes) and Puhikereru (Mount Furneaux), Tarakaipa, Whatu kaipono raua ko Whatu Tipare (the Brothers) and Pakeka/Maud Islands plus, other features and, cultural redress sites that are now in iwi ownership.
5. The task of incorporating the values of association in to the plan as to acknowledge the relationship of the iwi to these sites and, have regard to the matters set out in Part 2 of the RMA 1991, now falls to the panel. Ngāti Kuia can assist the panel in understanding what may be appropriate ways of mitigating adverse effects of the plan provisions on the relationship the iwi has to these sites and resources. The panel must have regard to these relationships when making a decision on any Objective, Policy Rule or zone overlay that affects in a minor way, any site or resource identified in the Act. We do however note, that not all the matters can now be incorporated by the inclusion and exclusion of wording in the plan provisions. Other remedies are addressed further in this evidence.
6. Our original submission was in two parts. The first part outlined that there are structural issues with the plan that inhibited a full and accurate expression of our

concerns about the implications and effects of the Objectives, Policies and Rules as they were notified. A remedy to this key concern is offered further in this evidence.

7. Our submission is in support of Chapter 3 and the Issues, objectives and policies that were agreed by consensus of the iwi working group. In light of the significant changes to the legislative context of Marlborough's iwi/tāngata whenua rights, it is accepted that updates to the content of the Chapter are pertinent in order to achieve an integral plan as desired by the Council. Other iwi submitters have made recommendations as to what these updates may be. We support the analysis and recommendations of the iwi authorities, however also note that changes to Chapter 3 should also be a consensus such as the IWG. It is unfortunate the Council when approached by the iwi authorities after the notification of the summary of decisions sought, to discuss these matters, was rebuffed.
8. Further to support the addressing of issues identified in Chapter 3, we identified a concern that some issues were not addressed adequately by the objectives and policies as notified. This was not specific to Chapter 3 but to the wider MEP whereby the provisions in other chapters were in contradiction to the issues raised or, their simply were no objectives or policies to address the issues at all. It is the assumption of Council as written on 2-5 of the MEP that the issues raised by iwi "*…have been addressed are through the remaining chapters of Volume 1, in which the resource management issues of significance for the whole community are identified. The management responses to these issues are set out in the remaining chapters of the MEP.*"
9. This degree of integration is anticipated and desired in our submission but we are of the finding that the provisions of the remaining chapters are not effective in achieving mitigation of the issues identified in Chapter 3. It is heartening that the plan anticipates that the issues that are of importance and/or significant to iwi are addressed though the whole of the plan however this does raise a procedural problem. We have already had discussion prior to the hearing around the holistic scope of submissions and this is particularly pertinent here. Iwi did not have prior

consultation or review of the chapters that contain the objectives and policies that should give relief to the issues identified in Chapter 3. A particular example of this would be heritage matters, which I will illustrate as an example shortly.

10. As we noted in our original submission, until the correlation and analysis of the Policies and Objectives to address the Issues is complete, any assessment or submission on the rules would be ineffective, we therefore did not submit on Volume 2 in detail. However a read of many of the rules indicates many seem to be counter productive to achieving the resolution of issues in Chapter 3 and therefore a full opposition of Volume 2 was required.
11. The second part of our submission was an attempt to rationalise our concerns in a manner that was consistent with the format required by the Council being, addressing specific elements of the plan and the decision sought. These aspects of our submission were included in the summary of decisions sought for notification. Our requested changes to the wording of specific objectives and policies or support thereof, of Volume 1 is to either insure consistence or give effect to Chapter 3 provisions.
12. In the case of today's hearing it is appropriate to briefly address the s42a report. It is important to note that the reasoning of our submission which focuses on the matters relating to the content of Chapter 3 and it's inclusiveness and permanence in the MEP, was not included in the Council's considerations and therefore, the s42a report is of no assistance to you on the content and intent of our submission.
13. We emphasise that the panel in reading submissions, must consider the whole of a submission and cannot chose to pick out some aspects to be treated independently of the rest. We therefore advise the panel to review today's evidence in the context of the original submission and put the s42a report to the side. This is primarily because it appears the Council has elected to base the s42a report on the summary of decisions sought and not on the full submissions including the reasoning.
14. A second look at Form 5, I believe reinforces this need to address the fullness of original submissions. The form requires among other things, "*The specific provisions of the proposal that my submission relates to* are:…*My Submissions is:…and; I seek the*

following decision from the local authority:." Without going in to too much discussion on this point, I think it is clear that the 'decisions sought' must be read in conjunction with the reasoning and the relation to the overall plan provisions. It is my reading that decisions sought (in this form) do not need to be restricted to/or directly correlate to specific objectives, policies or other plan provisions and there is an anticipation that they can be far broader.

15. One aspect of the s42a report that I find confusing is found at page 36 where the report addresses the relationship of Chapter 3 to other MEP provisions. The report talks to the submission of Tōtaranui Trust on the matter of the inclusion of Chapter 3 provisions in to the rest of the MEP. The intent of the submission as I read it, is for there to be a consistency between Chapter 3 and the rest of the plan which not only makes sense, but which the panel is charged with achieving. The implications of inconsistencies and contradictions between the separate provisions of the Plan have in the past, proven to be divisive and lead to extensive court and Government intervention.
16. What is confusing about this topic in the s42a report is that it does not reference the aspects of the submissions from Ngāti Kuia, Te Ātiawa o te waka a Maui and Ngāti Toa which also raise the issue of integration. The report also states *"…an approach has been taken overall to not cross-reference within the MEP and therefore, in my view, there would be confusion if cross referencing was done for a single aspect of the MEP."* This seems to be somewhat contradictory with the assertion previously mentioned on page 2-5 of the MEP whereby it is asserted the issues of Chapter 3 will be addressed by the provisions in other chapters.
17. Perhaps there are other Issues within the MEP that are also intended to be treated this way however, I am not aware of any and the unique position of Chapter 3 as the report suggests 'to direct assessment of activities as required by sections 6,7, and 8 of the RMA' would warrant it. I would summarise this simply as Part 2 considerations, therefore cross-referencing would be a useful tool to address the integration of the provisions of the MEP.

18. The report also seems to justify the recommendation to reject the submission point for a policy by referring to a section of Chapter 2 also on page 2-5 *"These objectives and policies set out in Chapter 3, are to be had regard to by those undertaking activities within the framework of the RMA."* This is not a policy that would be read by any person making an application for consent, it is not directive but assumptive and without sufficient training by processing staff, it is unlikely they would be able to judge the 'relevance' of the provisions of Chapter 3 to all the applications that are received for processing. I therefore do not agree with the Councils reasoning against cross-referencing, as this is a tool we are recommending as available to you to address the structural issues we have identified.
19. The preceding points 15-19 are addressing the position of Chapter 3 within the plan in order to meet the requirements of Part 2. The MEP and s42a report have used the terminology of 'have regard to' however the importance of the content on Chapter 3 is further up the order of considerations of the RMA. The content of the Chapter is also intended to address matters that arise in section 6, "*In achieving the purpose of this Act, <u>all persons exercising functions and powers under it</u>, in relation to managing the use, development, and protection of natural and physical resources, <u>shall recognise and provide for</u> 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; (f) the protection of historic heritage from inappropriate subdivision, use, and development: and; (g) the protection of protected customary rights:"*.
20. This certainly requires yourselves as 'persons' to <u>provide for</u> the relationships iwi have to sites and resources that are within the rohe of MDC through the development of this plan. The purpose of Chapter 3 as indicated by the last paragraph of the s42a report, is to assist the consideration of matters set out in Part 2. I say Part 2 because Section 5 also refers to 'provide for cultural well-being' as a fundamental purpose of the Act.

21. If this is the case and Chapter 3 is intended to serve that purpose then, it is fair to assume that the provisions of the chapter is permeated throughout the remainder of the plan, (as suggested at page 2-5 of the MEP). Considering any future users will use this Chapter as the first point of call to assess either; cultural effects or, affected party status and, that it is intended to achieve Part 2 requirements required by the Panel, then it can be said the chapter is pre-eminent to the remainder of the MEP.
22. The Panel must therefore ensure that there are no further provisions within the MEP that would diminish the value and effect of Chapter 3 if doing so would mean the Part 2 'provide for' pre-requisite would not be achieved.
23. To illustrate the need for cross referencing and the rationalisation of Objectives and Policies within the MEP lets use a Part 2, Section 6 requirement which the plan must 'provide for' *"(f) protection of historic heritage."* This is identified in Issue 3C as "Threats to the cultural heritage of Marlborough's Tangata Whenua iwi". Supporting Objectives and Policies are found on Pages 3-14 to 3-17. None of the objectives refer specifically to 'heritage' which is different but related to 'cultural values'. Objective 3.3 refers to the relationship of iwi with ancestral lands but not the protection of heritage sites of importance to iwi.
24. Supporting Policies 3.1.1 to 3.1.7 also do not mention heritage however policy 3.1.4 (c) anticipates site of cultural significance will be identified in iwi management plans. Policy 3.1.2 reinforces an expectation that an applicant will engage early in developing a proposal *"so that cultural values of Marlborough's Tangata whenua iwi can be taken into account".*
25. The supporting rules (General rules pg 2-29 and - 30) in Volume 2 do not relate to policies or objectives in Chapter 3 but are most likely addressing Chapter 10. Chapter 10 does have references to Māori and Tāngata whenua iwi at issue 10A. However when reading page 25-10 on the definition of a 'heritage resource' in conjunction with; Appendix 13 being the 'register of significant heritage resources' and; policies 10.1.3 (identify sites) and 10.1.4 which seek to establish a schedule of sites including wāahi

tapu as the sites in need of protection. It is unclear as to when a resource consent will be required.

26. By the reading of the elements together I can draw two possible intentions of how the plan intends to deal with heritage protection. Firstly and this is what I think the MEP does seek to do, is to list sites either in Appendix 13 or other documents and then the rules, policies and objectives as written are relevant to those sites alone or; the MEP seeks not to list heritage resources in order to ensure it covers all possible eventualities. This would be cumbersome to administer and does not set appropriate triggers for consent.
27. The Council response to date on the issue of heritage has been that iwi did not want to identify sites and that is why they have not been included. This is a relevant discussion point as is said on page 3-10 in addressing Issue 3C *"However in some cases artefacts from sites have been deliberately sought after and removed."* The identification of sites of importance to iwi on a list or, point on a map, <u>does not</u> protect them and in-fact would create an additional threat to these sites. The Council has other mechanisms from protecting heritage, archaeological sites and cultural sites through the use of zone rules, set backs, overlays etc.
28. In a similar way, we have addressed in our original submission other areas of the plan where the issues of iwi are not addressed though the subsequent objectives, policies or rules. The freshwater chapter has policies relating to Mauri (5.2.4), to protect the Mauri of waterways by setting minimum flow regimes. This should relate to Issue 3D 'the impact of resource use on the Mauri of natural resources'. However iwi were not involved in the setting of minimum flows listed in Appendix 6. Therefore these policies are ineffective and do not seek to resolve Issue 3D, 3B or 3G.
29. Ngāti Kuia desire for the Panel to make sound and reasoned decisions as representatives of the Council that address the issues that have been identified by the community. With this mind, the Panel should feel empowered to make changes to the plan in order to achieve that outcome without the specific need for such changes to be sought by submissions. In this way, the panel is making a decision on the values of

the community from what you hear through this process, but also on what is best for the environment while also ensuring the plan is consistent with the existing planning documents.

30. The Panel should therefore hear the evidence not as an assessment of effects as expected in a consent hearing, but as an expression of values that guide the direction of Marlborough's development and lifestyles for the next 15 years. In this context, you are in the position of making decisions on what values have greater weight when weighing up values that are at odds. I am of the opinion that section 8 offers assistance to you when dealing with weighing of values. The principles of 'active protection' and 'duty to consult' with iwi are requirements of Section 8 that are relevant in this case.
31. The Council has consulted with iwi for the formation of Chapter 3 which seeks to articulate the interests and issues affecting iwi in Marlborough, and therefore the panel should ensure that the remaining provisions of the MEP will protect those interests and address the issues. When weighing conflicting values, Council has an obligation to recognise that the RMA requires particular sensitivity to Māori values and interests and that the strong directions in Part 2 in relation to those values and interests are to borne in mind at every stage of the planning process (per Lord Cooke in *McGuire v Hastings District Council*). Also the Supreme Court in *King Salmon* has stated that section 8 has procedural as well as substantive implications which decision-makers must always have in mind.
32. Recent changes to the RMA have added requirements for further opportunities for iwi to be involved in, and consulted in the plan making process. These changes occurred after the notification of the MEP and therefore were not requirements at the time however, it does give further guidance as to what process are deemed appropriate to address the requirements of section 8. The new additions to Schedule 1 and Form 5 allow for iwi authorities to review the entire plan prior to public notification and, to provide feedback to the Council which must be taken into account. Form 5 has also been expanded to include submissions on consensus positions for processes such as

the IWG. The general thrust of the changes is to involve iwi authorities in decision making at an early stage of plan development.

33. The importance of section 8 has not changed as a result of the new measures but require a practical process to adhering to Part 2 in policy making.
34. Although the Council has not followed these processes, (and it was not legally required to) this does not mean the same outcomes cannot be achieved.
35. We offer solutions to the panel to address the concerns in our submission. Firstly we believe it is a requirement of the panel to assess each of the further provisions of the plan against the provisions and issues raised in Chapter 3. This would resolve the potential for contradictions and inconsistencies through subsequent decisions of the panel. If the panel is unsure of the issue in Chapter 3, they may reconvene the Iwi Working Group to assist by reviewing the potential changes and decisions of the panel against Part 2 and Chapter 3.
36. The Panel can provide for the implementation of iwi management plans through the MEP either as a policy or a review process.
37. Although the Council s42a report has stated that cross-referencing has been deliberately avoided, it is a useful tool that can be employed through an integrated plan as this one strives to be. As there are no rules that directly fall down from the content of Chapter 3, this would assist in future decision makers being able to weigh the values when implementing the plan.
38. The rules of the plan and the appendices in volumes 2 and 3 should be addressed only after the wording and structure of the Policies and Objectives have been decided upon. The formation of rules and methods should only be enacted to directly address and resolve the issues.
39. Thank you for the opportunity to speak to our submission today. I am happy to take any questions you may have.

Julia Eason

Ngāti Kuia

Te Iwi Pakohe

11 April 2018

In the matter of: The Proposed Marlborough Environment Plan

Topic: 11 being proposed Chapter 13 and parts of 15 of Volume 1

Evidence of: Te Rūnanga o Ngāti Kuia Trust (TRONK)

Prepared By: Julia Eason

The parts our Submission relates to: Chapter 3 as it relates to;

Policy 13.2.5(b) and (l)

Policy 13.2.6

Issue 13C – removal anticipated

Policy 13.6.1 (a)

Policy 13.10.11

Objective 13.12a

Policy 13.12.1

Policy 13.13.1

Policy 13.13.6

Policy 13.13.7

Policy 13.16.2

Policy 13.18.2 No reference found

Policy 13.18.5

Policy 13.18.7(g)

Policy 15.1.18 no reference found

Policy 15.1.19

Introduction

1. In our opening evidence to the full hearing Panel on 5 December 2017, we made recommendations to the panel for the handling of the relationship between Chapter 3 (Tangata Whenua) and the remaining Chapters of the MEP. It was recommended the panel are required to ensure there is not inconsistency between issues of relevance to iwi and the subsequent chapters. The implications of inconsistencies can vary but often seem to result in the 'putting aside' of iwi issues, objectives and policies, in favour of the specific policies and rules in the remainder of the plan.
2. Ngati Kuia provides additional evidence on Topic 11 (Use of the Coastal Environment) to assist the panel in reconciling Chapters 13 and 15 with Chapter 3. This evidence has been written in light of the s42a reports dated 12 March 2018 and prepared by Debbie Donaldson. We must note that some points raised in our original submission have not been referenced in the report, this may be due to them being covered by other topics or, a potential oversight. I have discussed two of these points that I believe are relevant to Topic 11 being Policies 13.18.2 and 15.1.18 as they relate to waste discharges to coastal water and no recommendation could be found in the s42a report.
3. There are four points to our evidence;
    a. The efficient use of space in the coastal marine area
    b. The parameters of permitted activities in the coastal marine area
    c. The ability to reference Iwi management plans and future marine title
    d. Discharges in to the moana

Chapter 3

4. To assist the Panel to understand the relationship with our submissions to Chapter 3, the following relevant excerpts and assessment have been taken from Chapter 3 of the MEP.
5. (Page 3-9) ***Issue 3C*** *"The threats to the cultural heritage of Marlborough's tangata whenua iwi." The Marlborough landscape and <u>coastline</u> is rich in iwi heritage…*
   "The destruction and degradation of cultural heritage sites, features and landscapes of significance to Marlborough's tangata whenua iwi has occurred in the past as a result of the use and development of Marlborough's natural and physical resources, especially land resources." … "this has usually occurred as a result of ignorance of the significance of the site to iwi. However, in some cases artefacts from sites have been deliberately sought after and removed."
6. (Page 3-10) ***Issue 3D*** *"There is therefore an ongoing concern about…any discharge of contaminants in to fresh or <u>coastal waters</u>. Discharges of human sewage and stock effluent in to water are a serious affront to the mauri of the water and Marlborough's tangata whenua iwi are unable to use water that is contaminated in this way."* This directly affects the ability of iwi members to undertake normal customary activities as addressed in "**Issue 3E** *difficulties in accessing and <u>using</u> cultural resources in traditional ways."* At page 3-11 the description of the issue highlights the importance of *"…the sea, coastal waters of the Marlborough sounds, foreshore, rivers and river mouths."* As areas that require access in order for the wellbeing of iwi members to be achieved. Of five resources listed four apply directly to the submission points we have made.

7. Issue 3E highlights how modification either physically inhibits access or, how pollution culturally makes the resource unusable. *"freshwater and coastal water resources have also been modified through river and creek diversions, the construction of flood defences, the reclamation of the sea bed,… and the discharge of contaminants in to rivers and coastal water."*
8. Objective 3.2 address tikanga while Objective 3.3 replicates section 6(e) requirements. for the areas of concern raised in this topic, Tikanga would dictate that no discharges to the waters of Marlborough should be considered appropriate if, by doing so, the discharge would make that water unusable for any reason. The most obvious of these discharges is that of human waste. Regardless of any treatment or dilution that makes the receiving water 'safe' for use, the perception of contamination is sufficient to prevent use out of fear of either illness and/or, consuming anything of human origin. Consuming any human faecal matter, no matter how minute, is a great cultural offence that degrades the mana of the consumer.
9. Supporting policy 3.1.3 gives good assessment criteria for consent applications, particularly for activities that would involve that matters of concern raised in Issues 3C – 3E. We recommend the plan allow for cross referencing to this policy for inclusion in Volume 2 in a wide range of Controlled to non-complying activities, particularly if the activity is relating to heritage, water, ecosystems and air. Policy 3.1.3 (d) vii specifically requires the consideration of the effects of an activity on *"fitness to support human use, including cultural uses."*

The efficient use of space in the coastal marine area

10. At Policy 13.2.5 (l) the plan seeks for redundant structures to be removed from the CMA which is consistent with the NZCPS however, we believe there is a need to address the limited number of structures that may be identified as heritage structures. With the inclusion of the accepted change proposed at (b) (as it relates to discharges) we are supportive of the policy and its general thrust to the preservation of amenity values. The other relevant points of our submission seek to ensure a consistent preservation of the character of the CMA.
11. At page 118 of the s42a report, the writer rejects our submission point however, I believe this is primarily due to the vague nature of the submission point. In our submission, we are seeking for jetties etc to be located in the location that has the least effects. I acknowledge the reasoning was not provided as it lies within the "reasons for our submission" which were only available on our actual submission which the writer may not have access to.
12. One of our key concerns as Kaitiaki of Te Hoiere (Pelorus Sound) is the continued development of the coastal margins for private gain while diminishing public space or, not providing any additional public benefit. Policy 13.10.11 at (b),(iv) does encourage the use of existing structures, however since the notification of this plan, we have made submissions opposing two new private structures being a jetty (U170668) and a boatshed (U170674) **Attached**.
13. Under the existing Marlborough Sounds Plan, Issue 9.2 relates to the loss of public space from private occupation of Coastal Space, while supporting Policy 1.2 seeks the 'avoidance (as far as practicable) of adverse effects of use or development in the Coastal Environment.' Further, Policy 1.10 says "*Avoid any adverse cumulative adverse effects of foreshore structures by taking into account the existence of other suitable structures prior to erecting new ones."* Yet despite this these two consents were recently granted when existing access was already available and actively used via a neighbouring jetty in the Miro Bay case and, a boat ramp, existing jetty and road access were available when a boat shed was granted.

14. Due to the existing policies not achieving what we believe is the objective of addressing the Issues 9.2 (MSRMP) and 13F (MEP), stronger direction needs to be given. With this in mind, and in light of the recent decisions, I am now of the opinion the Plan Policies should be worded to address the pro development status quo that continues to persist in the Marlborough Sounds.
15. This could be achieved by re structuring the Policy to read "Consent for new jetties (and boat sheds) will not be granted unless, there is no existing access by road, boat ramp or jetty."
16. We have found the majority of consent applications presume a right for the use and occupation of the coastal marine area for access and boat storage purposes when the applicant owns land nearby however, this assumption is not bourn from the policies in the existing plan nor the NZCPS. The presumption may come from the current practice.
17. The ownership of a boat is a luxury, and occupation of the commons a privilege that should not be taken for granted.
18. When assessing when a "functional need", the decision makers should consider if the need can be provided for on private land as the writer alludes to at Paragraph 713 on page 124 of the s42a report.

The Parameters of permitted activities in the Coastal Marine Area and;

19. At page 49 and under the matter of cultural values within the Coastal Environment, Ms Donaldson raises the consideration of cultural matters for permitted activities. At Paragraph 266 pg 51, the report asks for standards for permitted activities to address cultural effects.
20. The margins of the CMA are rich in cultural fabric through identified and yet to be recorded archaeological sites, sites of significance and kai moana areas. The current permitted activities and their conditions cover 7 pages of the rules at Chapter 16. River works, for example, should not be done during key recreation times such as school holidays or during fish migration times. Natural character should be retained by requiring the contouring of the excavation area to resemble that of a natural river mouth. The plan could cross reference to the other rules or permitted activity standards in the plan that refer to Natural Character. This will allow for the activity to be undertaken without getting caught by consent requiring rules in other parts of the Plan. This is particularly relevant considering landscape and Natural Character policies do not have associated zone (overlay) rules to give effect to them.
21. The deposition of sand etc does not have any standards relating to the colour, source, particle size etc of the sand to be used for introduction and therefore, a policy assessment is still required to meet the aesthetic requirements of other values. With that in mind, it seems in-effective to have this as a permitted activity.
22. As mentioned earlier, the foreshore and coastal environment is the location of archaeological sites that are not always distinguishable by an untrained eye. Of particular importance to Ngati Kuia are stone working sites which are usually found by left over flaking of Argilite. Also sinker stones and other archaeological material that may fit in the 'Protected Objects Act 1975', Which could, without intention, be removed under this permitted activity. Figure 1 below gives a common occurrence of sites located on the foreshore.

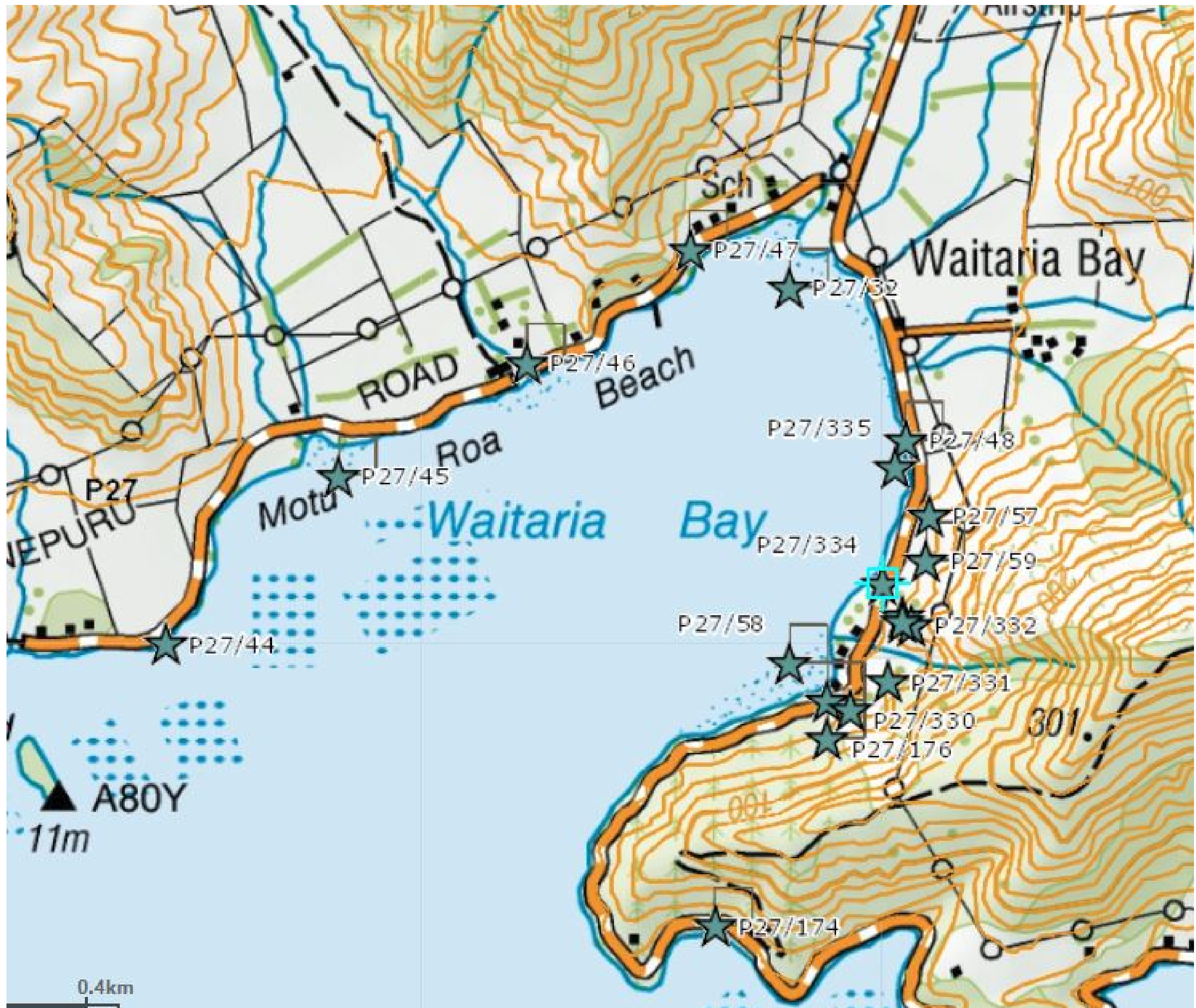

Figure 1 Snap shot of Waitaria Bay recorded archaeological sites along the foreshore. Pit and terraces to the east with working sites and ovens located along the northern side of the Bay. Taken from the Archsite database maps 5 April 2018

23. For this reason, the taking of Coastal material and depositing foreign material onto the foreshore should not be a permitted activity, as it is unlikely there would be an appropriate standard that could be applied to ensure the protection of Natural Character, aesthetic, and heritage/cultural values as required by the Act.
24. We made a point of not getting in to the detail of rules when we made our original submission as we had much broader concerns relating to the structure of the MEP and the integration of Chapter 3 issues in to the management of activities in all locations. The Coastal Environment is a key priority area for iwi for historical, traditional, customary and spiritual reasons. We are of the opinion that land disturbance should not be permitted within 200 metres of MLWS and that any such disturbance should be, at least a limited discretionary activity. In addition, sites that are not recorded but are known can be identified through Iwi management Plans and silent files.
25. For the same reasons outlined above, we submitted that Policy 13.13.1 should read '<u>no more than temporary</u>' rather than "*little*" disturbance… After reviewing the rules mentioned in the s42a report. I am now satisfied that the associated rules and standards for this policy being "*16.2 Standards that apply to all permitted activities 16.2.1. Disturbance of the foreshore or seabed.*" 16.2.1.1 – 16.2.1.5 effectively address our concerns, particularly standard 16.2.1.1.

"Any adverse effects arising from disturbance of the foreshore or seabed must be able to be remedied by natural processes within 7 days of the disturbance." However, this does not absolutely protect archaeological sites or protected objects from damage. The report writer does address the difficulty in monitoring such standards at para 822. Perhaps the plan could give guidance on what is considered to be 'little' as an alternative to minor or less than minor as 'little' is subject to interpretation.

26. For the same reasoning as above, we have also submitted that policy 13.13.6 should be reworded to remove 'realignment' from the riverbed activities during flood activities. The rule that permits much of the activities in the policy does not in fact permit realignment. Permitted rule 16.1.13 and standards 16.3.10 (and 16.3.11 for stormwater) mention the clearance of sand, shell, shingle or other natural material from a river mouth for flood mitigation. Neither rule nor standards allow realignment as a permitted activity which effectively makes realignment under this policy a Discretionary activity under rule 16.6.1. This does not perhaps achieve the purpose of the policy but does address our concerns with the policy.
27. Realignment of a waterway that is within the intertidal (tai) area can have significant adverse effects such as erosion and sedimentation of coastal waters. Realignment as it differs from a diversion (within the bed of a river), is a serious undertaking that could include disturbance and utter destruction of archaeology including koiwi at a number of locations (Particularly D'Urville Island). Realignment by mechanical means is contrary to the concept of Mauri and wairua as the natural processes of a river including flood events.

The ability to reference Iwi management plans and customary marine title.

28. At policy 13.13.7, we have asked that activities within the foreshore and seabed not otherwise provided for in the plan can prove there has been consultation with iwi. The report writer refers to 3.1.2 presumes such consultation should occur however, the recommendation for this requirement in this policy is due to the current customary marine title applications that currently cover the entire CMA of the Marlborough region. It may be many years before the courts decide on the boundaries of future title to be transferred to the various iwi however, it is worth while including the requirement here because, there are no 'standards' in Volume two for discretionary activities at rule 16.6.
29. Iwi may also have other considerations for the catchall discretionary activities that may be available in an iwi management plan which some iwi have and other are in the process of developing.

Discharges to the Moana

30. Objective 13.12a relates to the disposal of material in to the CMA. The objective as written does not seem strong enough to address the cultural issues identified at Issues 3B, 3D and 3E and objective 3.3 along with supporting policy 3.1.3 (d) i-vii which sets out the elements of waterbodies that need to be 'considered'. There are locations and types of disposals that will affect the relationship of iwi to a site such as, culturally significant sites or entities such as Kaikaiawaro, historic sites, kai moana gathering areas, and sites used for recreation. Disposals of human waste are not appropriate or materials that could corrode or become a hazard such as sunk ships. For this reason we are submitting the following rewording of objective 13.12a is appropriate.

"With the exception of ecological restoration projects, avoid ~~Minimise~~ the disposal or deposition of organic or inorganic material into the coastal marine area, where avoidance is not possible, disposal or deposition should be minimised."

31. Policy 13.18.2 relates to water quality within port and marina zones. We have recommended a change to:

    "(b) prohibiting the discharge of ~~effluent~~ any waste from boats berthed within ports, port landing areas or marinas."

32. We have recommended this change so to cover domestic waste, antifoul, oils and fuels, and other materials that would have a cumulative adverse effect that could move beyond the zone boundary and into recreational and kai moana gathering spaces. I could not see in the 42a report where this submission point was assessed by the report writer.
33. Policies 15.1.18 and 15.1.19 relate to the discharge of sewage to the coastal marine area. We submitted on many aspects of chapter 15 however only those that specifically mention the CMA appear to be covered by this topic. Our submission on policy 15.1.18 has not been covered by the s42a report.
34. At Policy 15.1.18 we have recommended the following rewording:

    "~~Avoid~~ Prohibit the discharge of untreated human sewage to waterbodies or coastal waters."

    The reasoning is provided at paragraphs 6 – 9.

35. At policy 15.1.19 we are recommending the following rewording:

    "progressively work toward eliminating the discharge of treated human sewage to coastal waters in the Marlborough sounds…"

    The reasoning again is found at paragraphs 6-9. As we have previously submitted on the inconsistency/contradictory issues we have with the structure of the MEP, I will also add that there should not be an exception for this discharge from ships as there are alternative locations outside of the sounds that are more appropriate for discharging human waste.

36. In further support of our position, I would like to bring to the attention of the panel the current status quo for discharges to the Marlborough sounds. The Marlborough Sounds Resource Management Plan has no permitted standard for the discharge of human waste to coastal water. Where some submitters believe the new plan will be more restrictive than the current situation, this is not the case. Rule 35.4.2.6 deems the discharge of human sewage a discretionary activity in the CMA provided it has passed through soil or a wetland.
37. Rule 35.5.3 deems the discharge of untreated human sewage is a non-complying activity, regardless of the source. In order to support the status quo and to 'maintain' existing water quality values under the existing plan, the MEP should not introduce a permitted discharge.
38. Proposed rule 16.7.4 which prohibits the discharges of human sewage to the CMA, in principle achieves much of what is sought by our submission but, allows for exceptions. We agree that there is a public good that is achieved through 'regionally significant infrastructure' for the

treatment and disposal in a safe manner, of sewage. This does not extend to ships where alternatives exist and the benefit is limited to the operator or ship owner.

39. Proposed rules 16.7.2 and 16.7.3 seem to consider that Grade A and B treated 'sewage' (the plan refers to sewerage) would be a discretionary activity in the MEP which would be inconsistent with the policy changes we are recommending.

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