

## STAFF REPORT

**TO:** Environment & Planning Committee

**FROM:** Sonya Leusink Sladen  
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**REFERENCE:** L206

**SUBJECT:** **CULTURAL HERITAGE SITES PLAN CHANGE PROJECT -  
REPORT EP09/04/07-** Report prepared for meeting of 23 April 2009

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### 1. INTRODUCTION

This report is to inform the Committee of progress on the preparation of a Cultural Heritage Sites Plan Change to the Tasman Resource Management Plan (archaeological sites protection).

At the meeting, the Policy Planner will provide an overview of the project with a ten-minute presentation.

### 2. BACKGROUND

The Cultural Heritage Sites project was previously coordinated by Stephanie Trevena, picked up by the writer in December 2008.

The Committee will recall that Stephanie was working towards a review of cultural heritage (archaeological sites) management in the Tasman Resource Management Plan ("the TRMP"). The need for a Plan Change was the result of three Environment Court appeals between the Council and three local Maori tribal Iwi groups. The appeals relate to the reinstatement of some early cultural heritage protection rules (which were withdrawn from the Plan by the Council in 1997).

Through mediation it was agreed that a fresh Plan Change would be a better way to resolve the issues, rather than going to Court over the matter. A memorandum of understanding between the three Iwi Appellants and Council set out an agreement for the process with a "best endeavours" timeline for a Plan Change of June 2008. The Environment Court has since directed that, in failing to meet this deadline, Council have a Plan Change prepared for notification by 30 May 2009.

Stephanie Trevena's most recent report to the Committee on the project was on 17 July 2008 (EP08/07/09 refers).

In brief, the report outlined cultural heritage sites policy options, based on the significance of sites and the quality of information about them. Six of the ten options were recommended as a basis for the drafting of a Plan Change, using a blend of regulatory and non-regulatory methods.

The Committee largely accepted the officers' recommendations (with a small amendment to Option 8), as the basis of a draft Plan Change. For more detail and background information, the Committee is urged to source the original 17 July report.

### **3. PROGRESS**

Since taking over the project late last year, the writer has worked towards drafting a Plan Change in accordance with the 17 July Committee decision, and the 30 May deadline for notification.

#### **3.1 Challenges**

Some challenges arose as the result of trying to draft TRMP provisions and create planning maps in accordance with the policy options of the 17 July report. The main challenges were:

- i) The assumption of need for a resource consent for certain activities in relation to known sites, without detail about the terms and circumstances of need.
- ii) The need for greater clarity about the role of the Historic Places Trust under the Historic Places Act (namely, the HPA "Authority" process), and its relationship to the TRMP.
- iii) The need for more precision about how some "uncertain" cultural heritage sites information (i.e. imprecise location and extent data) would be effectively implemented within the six adopted policy options.
- iv) A clearer understanding of the "qualification" of various parties, such as Council staff, an archaeologist or local Iwi representative, to make certain decisions affecting the management of a cultural heritage site.
- v) Practical difficulties associated with producing and up-dating maps as part of the TRMP, based on information that may be inaccurate and subject to the need for regular up-dates.

To help in addressing the above challenges, staff discussed the challenges and possible solutions with a number of parties.

This consultation included further discussion with Council Consents staff involved in activity management on a daily basis, local Iwi representatives, landowner stakeholder representatives such as Federated Farmers and Horticulture New Zealand, Historic Places Trust staff involved in archaeological sites protection and management, and Council's two Community Boards.

#### **3.2 A Way forward**

A way forward for a Draft Plan Change has emerged through consultation and careful consideration of the above challenges. The following ideas or principles set out what might be an appropriate basis for a Cultural Heritage Sites management framework.

These principles, which are considered to be generally acceptable to all parties who were consulted in recent months, have been used in the initial drafting of Plan Change concepts. The principles are:

1. That the “need” for a resource consent (regulation) should be aligned with the likely adverse effects of an activity, namely the modification, damage or destruction of a cultural heritage site.

To require a landowner to obtain a resource consent “just because” there is a cultural heritage site on their land, or because they propose a particular kind of activity that might threaten it, is not considered to be the most appropriate effects-based approach to management.

2. That Council’s database of known cultural heritage sites (used by staff when dealing with development proposals), should reflect the different degrees of certainty about location, extent, and significance of sites, and should be used appropriately in light of such uncertainties.

Cultural Heritage Sites information should be used in a way that is appropriate to the level of certainty, so that the information is used in a transparent or “most honest” way. The database must also be responsive to new sites information and amendments to existing sites, so that it is as accurate and up-to-date as possible.

3. That the right people, who are appropriately qualified, should be making recommendations or decisions about the significance and appropriate management of a site.

Council staff do not have archaeological qualifications or knowledge about the significance of sites to local Iwi. Therefore, any Plan Change needs to be supported by a process of case-by-case assessment where required and justified whereby recommendations or decisions are made by people who *do* have the appropriate knowledge and experience.

4. That processes (both internal to Council and by other external parties who need to be involved) are clear, simple and efficient, but effective in achieving good decisions about the management of cultural heritage sites.

One of the biggest “fears”, expressed by landowners during consultation, is that of the unknown: Unknown time delays, unknown costs and unknown outcomes in respect of their land and a cultural heritage site that might have an effect on what they can do. Clarity and simplicity of process is important.

5. That there is recognition by Council that regulation through the TRMP will be limited in effectiveness without a “Whole of Council” commitment to cultural heritage sites management.

Improving in-house processes within all Departments, education and advocacy with the Community, open and effective communication with landowners, and a commitment to building positive relationships with local Iwi are actions that the Council should be taking to ensure the effective implementation of any Plan Change process.

These principles have formed the basis for initial Plan Change drafting attempts that differ somewhat from that presented to the Committee on 17 July 2008. The new approach and the differences from what was adopted by the Committee are summarised in the following section.

#### 4. POLICY OPTIONS

##### 4.1 Changes to Policy Options

Based on the above principles 1 - 5 (set out in Section 3.2) some amendments are required in respect of the 6 Policy Options adopted by the Council at the 17 July Committee meeting.

The six Policy Options and the recommended changes based on the principles are set out in the Table below.

Table 1: Suggested Changes to Adopted Policy Options

<b>Adopted Policy Option - 17 July 2008 EPC</b>	<b>Changes, based on the above principles (Section 3.2)</b>
<p><b>Option 3</b> - “To protect those archaeological sites and wahi tapu identified as having high archaeological and/or cultural values.”</p> <p>Protection would be achieved by identifying highly significant sites on the planning maps and including rules in the Plan that would require a resource consent to be obtained.</p>	<p>All sites that have archaeological values will be treated the same way in process terms.</p> <p>If there will be any modification, damage or destruction to any site as the result of an activity, then an “Authority” from the Historic Places Trust would be required. This requirement is law under the Historic Places Act, and sits outside of Council’s responsibilities.</p> <p>Resource consent would only be required in the above circumstance: The HPT Authority would be a standard of the controlled activity resource consent, and through the consents process, local Iwi would assist landowners in determining the best way to manage the development in a culturally sensitive way. In the absence of any HPT approval, consent would cascade to a discretionary activity where a known site was likely to be modified, damaged or destroyed.</p> <p>In the place of a TRMP planning map notation, showing significant cultural heritage sites, the Council will have a Cultural Heritage Sites database. All sites known to Council would be shown.</p>

	<p>This will be accessible to the public. Changes to it, and any currently listed site, will be open to landowner input. The public notification and submissions process will still apply (as if it were part of the TRMP, in accordance with Part 3, Schedule 1 of the RMA).</p>
<p><b>Option 4</b> – “To control subdivision, use and development within areas identified as archaeological precincts as shown on the planning maps in order to avoid damage and destruction of archaeological sites”</p> <p>Protection would be achieved by identifying precincts on the planning maps and including rules in the Plan that would require a resource consent to be obtained for earthworks activities, subdivision, and building alteration or construction.</p>	<p>This option suggests a subdivision consent process that is somehow “additional to” current requirements, where a known Cultural Heritage Site might be affected.</p> <p>However, all subdivision activity requires a resource consent regardless of circumstance. Therefore it is recommended that Cultural Heritage Sites management and protection simply be an additional matter for consideration at the time of subdivision.</p> <p>The same principle of management outlined above (see Option 3) would apply.</p> <p>That is, through the subdivision, applicants would be expected to manage and protect any known sites. Or where the subdivision might result in the modification, damage or destruction of a Cultural Heritage Site, hold an Authority from the Historic Places Trust. Contact with local Iwi would be a requirement of the subdivision process, and discussions would be encouraged to happen early in the process to ensure that land is developed in a culturally sensitive manner.</p>
<p><b>Option 6</b> – “To control subdivision, use and development of land in relation to known archaeological sites/wahi tapu where the site location or extent is accurately known”</p> <p>Protection would be achieved by identifying highly significant sites on the planning maps and including rules in the Plan that would require a resource consent to be obtained.</p>	<p>Comments relating to Options 3 and 4 apply here.</p>

<p><b>Option 8</b> – “To alert landowners to the possibility of archaeological sites/wahi tapu in the vicinity of their property, for these sites known as “grid reference” sites, where the location and extent of sites is not accurately known.”</p> <p>The Committee accepted this option to the extent that landowners should be alerted to the possibility a site, but that information would be on Council’s GIS system, not the TRMP planning maps.</p>	<p>Two mapped databases are implicated by the 17 July Option 8: the TRMP planning map and a separate Council GIS system.</p> <p>However, it is recommended that in the place of two systems, the Council will have a single Cultural Heritage Sites database. All sites known to Council would be shown.</p> <p>This will be accessible to the public. Changes to it and any currently listed site will site be open to the public notification and submissions process (see Option 3 comments also).</p> <p>A resource consent would only be required if the proposed activity will modify, damage or destroy the site (see also Option 3 comments).</p>
<p><b>Option 9</b> – “For archaeological precincts, establish a systematic archaeological investigation programme, to recover information regarding the nature and extent of archaeological material that is likely to be present”</p> <p>Amend the “methods” sections in the TRMP to reflect this commitment to non-regulatory methods of cultural heritage sites</p>	<p>No change is recommended to this option.</p>
<p><b>Option 10</b> – “To employ a range of non-regulatory methods to enhance understanding and appreciation of archaeological sites/wahi tapu, and to assist in the protection fo sites”</p> <p>Amend the “methods” sections in the TRMP to reflect this commitment to non-regulatory methods of cultural heritage sites</p>	<p>No change is recommended to this option.</p>

Based on the 17 July options and above changes, staff have begun to draft a Plan Change. If the Committee accept these changes, then a Draft Plan Change will reported to the Committee for further discussion, input and refinement.

## 5. NEXT STEPS

As noted, Council staff have been working towards the Court imposed deadline of 30 May 2009 for public notification of a Plan Change.

Assuming that the principles (see 3.2) for a Cultural Heritage Sites protection and management framework are generally accepted by the Committee, a draft Plan Change will be ready for Committee approval at the 15 May EPC meeting.

However, before being formally notified as a Plan Change to the TRMP, it is recommended that this draft be first released as a Draft Plan Change for wider community consultation and public input.

Releasing a Draft Plan Change for community discussion is considered to be an effective method of getting good feedback, resulting in improvements to the proposed Change before it is formally notified.

Without this input, the “quality” of the Plan Change will not be as high. Council may also risk a negative reaction from the general public who may not have been aware of the proposed changes.

However, the need for consultation means that the 30 May Environment Court deadline for the notification of a Plan Change will not be met. This will need to be explained to the Court, and a new realistic timeframe proposed for the Court’s consideration.

Subject to staff resources necessary to complete the process following community consultation, it is expected that a proposed Plan Change will be ready for public notification by about August 2009.

## 6. RECOMMENDATION

That the Environment & Planning Committee:

1. **Agrees** to the principles proposed in this report (Section 3.2) as the most appropriate basis for a draft Plan Change to address the management of cultural heritage sites in the District;
2. **Notes** that this agreement leads to modification of the adopted Policy Options 3, 4, 6 and 8 of EP08/07/09 from the 17 July 2009 EPC meeting; and
3. **Directs** staff to complete the drafting of a Draft Plan Change, for adoption for public consultation at its 15 May 2008 EPC meeting.

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