

**PALMERSTON NORTH CITY COUNCIL
PLAN CHANGE C: KIKIWHENUA RESIDENTIAL AREA**

RESPONSE TO COMMISSIONERS' MINUTE OF 13 SEPTEMBER 2019

1. Pursuant to Direction 4 of the Commissioners' Minute of 13 September 2019, the Commissioners have requested a report identifying the reasons why an order under s 42 of the Resource Management Act 1991 ("RMA") should be made in respect of the Cultural Impact Assessment ("CIA") and why those reasons outweigh the public interest in making the CIA public.
2. Specifically, the Commissioners have raised concerns over the basis for the withholding of the CIA by reference to the circumstances set out in section 42(1) of the Act.

Legal Framework – Section 42 of the RMA

3. Section 42 of the RMA provides for the protection of sensitive information by (among other things) prohibiting or restricting the publication or communication of any information supplied to a local authority, provided the elements of s 42(1) are met.
4. In accordance with s42(1), an order can be made where the Council is satisfied that the order is necessary to –
 - (a) Avoid serious offence to tikanga Maori or to avoid the disclosure of the location of waahi tapu; or
 - (b) To avoid the disclosure of a trade secret or unreasonable prejudice to the commercial position of the person who supplied, or is the subject of, the information;

and that, in the circumstances of this case, the importance of avoiding such offence, disclosure or prejudice outweighs the public interest in making that information available.

5. Where steps are taken to protect against serious offence to tikanga Maori or to avoid disclosure of the location of waahi tapu, information can be protected from the commencement of proceedings to which it relates and for an indefinite period or until such date as the Council considers it appropriate. In this case, bearing in mind the advice from Rangitāne O Manawatu, Council officers are of the view that the CIA should be protected from disclosure indefinitely, or at least until Rangitāne O Manawatu is willing to release the report.
6. In this case Council officers seek an order on the basis that it is necessary to avoid serious offence to tikanga Maori, or to avoid disclosure of waahi tapu. Further, in the present circumstances, the importance of avoiding such offence, disclosure or prejudice outweighs the public interest in making that information available. These matters are addressed below.

Application of s 42 to the Cultural Impact Assessment

7. As identified in the introduction to the CIA, Rangitāne O Manawatu provided the report to inform the position of Council officers internally when preparing the Plan Change, and on the proviso that if it was to be released more widely, it would be with the consent of Rangitāne O Manawatu. At all times the mana of Rangitāne o Manawatu was to be maintained.

8. Council officers have consulted with Rangitāne O Manawatu throughout the Plan Change process, and again more recently on receipt of the Commissioners Minute. Rangitāne O Manawatu remain of the view that the CIA should not be made public.
9. Specifically, Rangitāne O Manawatu have indicated that they want the Council to hold the report confidentially, and in reliance on section 42(1) of the RMA. With reference to the grounds in that section, Dr Jon Proctor has provided the following advice to Council officers on behalf of Rangitāne O Manawatu:

Releasing the CIA would cause serious offence to tikanga Maori. The report contains the location of an Urupa which is not widely known and release of this site in an already easily accessible site may result in the risk of disturbance and impacts to tapu.

While the District Plan already identifies Kikiwheuna as a site of significance to Tangata Whenua, the CIA provides further detail that would then be made available to the public. This further information is sensitive due to the significance of the sites, some of which sit outside of the Kikiwheuna Residential Area.

As our plans around our adjacent land, Kikiwheuna and the Urupa not well defined, advanced or operationalized in any way then we would like to ensure that the integrity of the information (about sites) contained in the report is maintained and controlled by those parties that have a controlling interest in the sites going forward. Any re-interpretation or misinterpretation by the public or others of the information in the report would not be consistent with tikanga and create offense to Rangitāne O Manawatu.

We do not believe that the wider public interest outweighs our right to protect our information. We have a Memorandum of Partnership with RACE, a Partnership Agreement with PNCC and the existing and proposed District Plan rules ensure our waahi tapu will be protected. Given that all affected landowners are in agreement, and no submissions were raised on this matter during the plan change process, we do not consider there is a justification for making our intellectual property public.

10. Danielle Harris, Chairperson of Rangitāne o Manawātū Settlement Trust and Chief Executive of Tanenuiarangi o Manawātū Incorporated has also stated:

With the utmost respect it should be for Rangitāne o Manawatu to decide how our reports are used and treated as the Treaty partner to the Council and the Crown. For the Commissioners to make the decision for us is a usurpation of our mana as mana whenua. We are the ones who own that report and thus we own its contents and the intellectual property of it.

If their intention is to release it then I would like the report withdrawn as its owners. I have no problem if a Commissioner wants to talk to me.

We have just settled our Treaty claims and yet again it appears our rights under the Treaty are being ignored. We are past the days of having to justify our reasoning for why it should not be released. The fact that we have asked should be enough and should be respected by all parties. Once again our power is being diminished by others and this is unacceptable.

We have never had a problem in the past about our reports not being released in other consenting processes so why has this become an issue now.

We do not mind the Commissioners only seeing it but do not want it made public any wider than that.

Public Interest

11. Council officers are of the view that the public interest in making the CIA publicly available does not outweigh the offence or disclosure that would result from publication of the CIA.

Position of Rangitāne O Manawatu

12. Rangitāne O Manawatu have indicated that there would be offence to tikanga Maori and disclosure of sites, with related effects, if the CIA was not protected under s 42(1). Further, they indicate that there is a need to protect the information from disclosure so as to prevent re-interpretation or misinterpretation by the public or others of the CIA. Any re-interpretation or misinterpretation of the information would be not be consistent with tikanga and create offence to Rangitāne O Manawatu.
13. Council officers note that this approach is consistent with case authority where orders prohibiting publication of evidence regarding waahi tapu of iwi have been made because, in the circumstances of the case, the public interest was outweighed by the risk that publication of evidence about the location of waahi tapu might lead to spiritual and physical effects, such as risk of disturbance and loss of the remains.¹

Involvement of third parties

14. It is also relevant that the landowner and affected landowner (RACE) and Rangitāne O Manawatu support the plan change provisions. While the Commissioners have queried whether non-disclosure is appropriate in a public and participatory process, the need for scrutiny and evaluation of recognition and protection of sites of significance in this particular case² may not be as determinative where the interests of those who own the land, and their right to question any reason why activities might be restricted on their land, has been addressed through other arrangements (such as to the MoP in this case).³
15. There was also limited interest from submitters on the CIA. This was despite the section 32 assessment containing a summary of the CIA and a table of the CIA recommendations⁴. There were no submissions on cultural matters. The only submission that could be considered to be indirectly related was a submission from Mark & Denise Oram with concerns about the view from across the Mangaone Stream.⁵ Their submission included a minor comment about the aspirations that Rangitāne o Manawatū have for the Mangaone Stream environment.

¹ *Te Runanga A Iwi O Ngati Tamatera v Thames-Coromandel DC* (2000) 7 ELRNZ 27.

² Commissioners Minute, dated 13 September 2019, paragraph 10.

³ Section 32 Report, page 24, refers to the Memorandum of Partnership between RoM and RACE.

⁴ At pages 24-25.

⁵ At page 40.

16. In these circumstances the public interest in the RMA process is not as great as to outweigh the concerns of Rangitāne O Manawatu in release of the information (including preservation of the confidence of information regarded by iwi as sensitive and the associated tikanga).

Information outside Public Domain

17. It is also notable that the CIA contains information at a level of detail regarding the location of the sites that is not otherwise in the public domain. While there is reference in a general manner to the sites within the District Plan, there is more detail in the CIA, and Rangitāne O Manawatu have indicated that they are concerned about misinterpretation and misuse of the information in a manner inconsistent with, and offensive to tikanga Maori.
18. As articulated by Dr Proctor, in its current confidential state, Rangitāne o Manawatū maintain control regarding the way that the information provided in the CIA is interpreted by those who use it. If the information in the CIA is released publicly, there may be the assumption by the public that the CIA can be read on its own. Some Māori words and concepts can be translated into English without causing offence. However, sometimes there's another layer of meaning or understanding that needs to be considered. Without the guidance of someone with knowledge of Mātauranga Māori, there is a high degree of risk that the information in the CIA may be misinterpreted. The CIA information is treated as confidential by Rangitāne O Manawatu and was disclosed to Council on this basis. Rangitāne O Manawatu remain of the view that the confidentiality of the information should be protected.

Quality of Information

19. The provision of this type of information in an accurate manner is integral to a robust and efficient planning procedure, as is a positive working relationship with Rangitāne O Manawatu. If the CIA is published, there is a risk that iwi participation and the sharing of cultural information may be impacted going forward. In this sense, avoiding offence to tikanga Maori and the disclosure of waahi tapu also has benefits for the Council and wider public, by ensuring that decision makers have information they may not otherwise have. This means that decision making is enhanced through direct iwi engagement (and the imparting of cultural information) in plan development, and in the view of Council officers, this is relevant when considering the weighting of public benefits.



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