Hastings District Plan

**Proposed Plan Change 3: Providing for Marae in the Rural and Plains Production Zone**

Section 32 Summary Evaluation Report



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Date: 12th February 2021

Status: Final

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**1.0 PURPOSE OF THIS REPORT**

This report is an evaluation of Plan Change 3 to the Hastings District Plan in accordance with Section 32 of the Resource Management Act 1991.

The report is required to accompany the proposed plan change for public notification under Schedule 1 of the RMA.

It is recommended that the Section 32 be read in conjunction with the current provisions of the Hastings District Plan. Submissions can only be made on the proposed changes, not the existing unaltered provisions.

**2.0 BACKGROUND INFORMATION**

Reason for Plan Change

Under the 2003 District Plan marae were provided for as part of the wider Places of Assembly provisions. The Places of Assembly definition in the 2003 District Plan included churches and halls as well as marae. Places of Assembly were a permitted activity in the 2003 District plan subject to performance standards. This resulted in a number of activities locating particularly in the Plains Production Zone that conflicted with the wider Heretaunga Plains Urban Development Strategy that specified strict urban boundaries. As a result Places of Assembly were no longer permitted with the Plains Production Zone and the Rural Zone. In the plan review process there was an omission that resulted in marae not being specifically provided in the Plains Production Zone and the Rural Zone and as a result made them a non-complying activity.

This has led to an inconsistency in the current District Plan in how marae are provided for throughout the district. For instance marae are listed as a permitted activity in the Plains Settlement Zone which includes the rural settlements of Paki Paki, Bridge Pa and Omahu. Marae are also provided for in other zones, including the residential, commercial and light industrial zones, where they are still identified and included as Places of Assembly.

In summary neither “Marae” nor “Places of Assembly” are listed as an activity in the Plains Production Zone or the Rural Zone. Therefore in these two zones marae default to a non-complying activity.

This change seeks to address this situation by identifying “Marae” as a permitted activity in the Plains Production Zone and in the Rural Zone subject to specific performance standards. The proposed changes to section 5.2 and 6.2 of the District Plan are outlined in section 4.0 of this evaluation report.

This proposed plan change is significant as there are currently 23 marae acknowledged across the district in our territorial authority. Increased capacity and autonomy across the hapū groups in this area are also seeing older and or former significant places of gathering going through the various processes of establishing themselves as marae entities in 2020 and beyond. Marae across Hastings district, that includes two Taiwhenua (Heretaunga and Te Whanganui-a-Orotū) are not only vital for hapū and tangata whenua to maintain their respective and traditional relationships with place and provide a spiritual and cultural space for whānau and hapū, marae also make a significant contribution to the local economy across Hawke’s Bay and in particular, Hastings District. Marae provide the appropriate cultural space for all cultural events to occur, including small and large events, and marae also serve as a multi-purpose community facilities; for instance, Civil Defence and Emergency Management Centres, community meeting places, church services, and or local school events. It is important that the District Plan facilitates for marae, their continued use, improvements and development. Council also have responsibilities under the Resource Management Act (RMA) to provide for the cultural wellbeing of Māori, recognising their physical and spiritual connection to the land.

In the District Plan marae are defined as follows:

Marae: means a site reserved under the Maori Affairs Act 1953 which is owned or administered by legally appointed trustees or a trust body for the common benefit of a defined group of Maori people.

**3.0 CONSULTATION**

When deciding who to consult and after discussions with Council’s Advisor on Relationships, Partnerships and Heritage, the draft proposal was sent out to all marae in the Hastings District via e-mail and letters. The information included a summary of the provisions and background information to the RMA process.

It was considered that the plan change was specifically relevant to all marae situated in the Hastings District taking into account that marae have their respective rangatiratanga (autonomy). Wider community interest would be addressed by the opportunity to make submissions via the formal RMA submission process.

Feedback was obtained from a small number of marae and the focus was on building coverage and infrastructure associated with marae. Another issue was the importance of papakainga housing, often in close proximity to existing marae. There was recognition that the existing Section 21.1 of the District Plan (Papakainga District Wide Activity) addressed this aspect.

Pukehou Marae explicitly stated that they were happy with the draft changes.

Follow-up meetings were held at Council with the representatives of Kohupatiki Marae and the representatives of Waitangi Marae (Waipuka Maori Reservation Trust).

In relation to Waitangi Marae (concerning Waipuka Maori Reservation Trust land at Waitangi Road, Waimarama) plans were outlined for a potential new marae complex. This was timely as it informed the proposed plan change process about the extent of building coverage for a contemporary marae development and a subsequent change has been made to the maximum gross floor area.

**4.0 PLAN PROVISIONS TO BE CHANGED**

Twenty three marae are acknowledged across the district and it is the provisions of the Rural Zone and the Plains Production Zone that are proposed to be changed. The details of the new provisions are outlined below.

**4.1 Section 5.2 Rural Zone**

Anticipated Outcomes

Add new outcome RZAO10:

*Provision for the use and development of marae.*

Objectives and Policies

Add new objective RZO7:

*To recognize and provide for tangata whenua’s cultural and physical relationship with their land.*

Add new policy RZP21 and associated explanation:

*To provide for the development and maintenance of marae in rural locations in recognition of their cultural significance and taking into account the adverse effects on rural character.*

*Explanation*

*The District Plan recognizes that marae are essential for Maori to maintain the traditional relationship with their land providing both a spiritual and cultural home for hapu and iwi. They are an important place where significant cultural events occur and serve as a multi-purpose community facility.*

Rule Table 5.2.4 Rural Zone

Add new rule:

|  |  |  |
| --- | --- | --- |
| Rule | Land Use Activities | Activity Status |
| *RZ31* | *Marae* | *P* |

5.2.5 General Performance Standards and Terms

5.2.5B YARDS

Add new heading

*4. Marae Buildings*

Specify

*Front yard 7.5m*

*All other boundaries 5m*

5.2.6 Specific Performance Standards

Identify 5.2.6L Marae and specify:

SITE DENSITY AND COVERAGE

*Maximum building coverage – 35%*

*Maximum gross floor area – 1000m2*

*Outcome:
Marae will be integrated into the scale and amenity of the zone*

SALE OF ALCOHOL

*The sale of alcohol may take place*

5.2.8 Assessment criteria – Restricted Discretionary and Discretionary Activities:

Add 5.2.8J Marae and insert following criteria:

*The suitability of the site and the extent to which alternative sites or locations have been considered.*

*The impact of the scale, character and/or intensity of the use and its compatibility with surrounding activities.*

*The ability of any proposed buildings to be integrated with the character of the site and locality.*

*The extent to which the activity affects the natural, cultural and heritage activities of the site.*

*Whether the site can be adequately serviced.*

*Matters of Consideration*

*The recognition of tikanga Maori values including enabling marae-based development in accordance with those advocated in the Hawke’s Bay Regional Resource Management Plan 2012 (POL UD6.1, POL UD6.2, OBJ34 POL 57).*

**4.2 Section 6.2 Plains Production Zone**

Anticipated Outcomes

Add new outcome PPAO11:

*Provision for the use and development of marae.*

Objectives and Policies

Add new objective PPO10:

*To recognize and provide for tangata whenua’s cultural and physical relationship with their land.*

Add new policy PPP26 and related explanation:

*To provide for the development and maintenance of marae in rural locations in recognition of their cultural significance and taking into account the adverse effects on rural character.*

*Explanation*

*The District Plan recognizes that marae are essential for Maori to maintain the traditional relationship with their land providing both a spiritual and cultural home for hapu and iwi. They are an important place where significant cultural events occur and serve as a multi-purpose community facility.*

Rule Table 6.2.4 Plains Production Zone

Add new rule:

|  |  |  |
| --- | --- | --- |
| Rule | Land Use Activities | Activity Status |
| *PP43* | *Marae* | *P* |

6.2.5 General Performance Standards and Terms

6.2.5B YARDS

Add new heading

*5. Marae Buildings*

Specify

*Front yard 7.5m*

*All other boundaries 5m*

6.2.5J TOTAL BUILDING COVERAGE

Add a new clause stating

*Note: For Marae refer to the specific performance standard 6.2.6P for the maximum site coverage and the maximum gross floor area.*

6.2.6 Specific Performance Standards and Terms

Add 6.2.6P “Marae” and specify:

SITE DENSITY AND COVERAGE

*Maximum building coverage – 35%*

*Maximum gross floor area – 1000m2*

*Outcome:
Marae will be integrated into the scale and amenity of the zone*

SALE OF ALCOHOL

*The sale of alcohol may take place*

6.2.8 Assessment criteria – Restricted Discretionary and Discretionary Activities:

Add 6.2.8U “Marae” and add in selected criteria as follows:

*The suitability of the site, particularly in regard to the versatile values of the land, and the extent to which alternative sites or locations have been considered.*

*The impact of the scale, character and/or intensity of the use and its compatibility with surrounding activities.*

*The ability of any proposed buildings to be integrated with the character of the site and locality.*

*The extent to which the activity affects the natural, cultural and heritage activities of the site.*

*Whether the site can be adequately serviced.*

*Matters of Consideration*

*The recognition of tikanga Maori values including enabling marae-based development in accordance with those advocated in the Hawke’s Bay Regional Resource Management Plan 2012 (POL UD6.1, POL UD6.2, OBJ34 POL 57).*

**5.0 SECTION 32 EVALUATION REQUIREMENTS**

**5.1 RMA Requirements**

Clause 5(1) of Schedule 1 of the RMA specifies that a local authority must prepare an evaluation report for a proposed policy statement or plan in accordance with section 32 and for Council’s to have particular regard to that report when deciding whether to proceed with the statement or plan.

Section 32 of the RMA specifies the following:

*(1)An evaluation report required under this Act must—*

*(a) examine the extent to which the objectives of the proposal being evaluated are the most appropriate way to achieve the purpose of this Act; and*

*(b) examine whether the provisions in the proposal are the most appropriate way to achieve the objectives by—*

*(i) identifying other reasonably practicable options for achieving the objectives; and*

*(ii) assessing the efficiency and effectiveness of the provisions in achieving the objectives; and*

*(iii) summarising the reasons for deciding on the provisions; and*

*(c) contain a level of detail that corresponds to the scale and significance of the environmental, economic, social, and cultural effects that are anticipated from the implementation of the proposal.*

*(2) An assessment under subsection (1)﻿(b)﻿(ii) must—*

*(a) identify and assess the benefits and costs of the environmental, economic, social, and cultural effects that are anticipated from the implementation of the provisions, including the opportunities for—*

*(i) economic growth that are anticipated to be provided or reduced; and*

*(ii) employment that are anticipated to be provided or reduced; and*

*(b) if practicable, quantify the benefits and costs referred to in paragraph (a); and*

*(c) assess the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the provisions.*

So in summary two main evaluations are required:

Under S32(1)(a)

The extent to which the objectives of the proposal are the most appropriate way to achieve the purpose of the RMA

And under S32(1)(b)

Whether the provisions in the proposal are the most appropriate way to achieve the objectives by:

* Identifying other reasonably practicable options for achieving the objectives
* Assessing the efficiency and effectiveness of the provisions in achieving the objectives (Including identify and assess the benefits and costs of the environmental, economic, social, and cultural effects that are anticipated from the implementation of the provisions)
* Summarising the reasons for deciding on the provisions

**5.2 The extent to which the objectives of the proposal are the most appropriate way to achieve the purpose of the RMA**

5.2.1 The intent of the proposed plan changes and the requirements of the RMA

The proposed change adds one new objective to the Rural Zone and the Plains Production Zone

*To recognize and provide for tangata whenua’s cultural and physical relationship with their land.*

The specified related anticipated outcome is:

*Provision for the use and development of marae.*

There is a related policy and explanation:

*To provide for the development and maintenance of marae in rural locations in recognition of their cultural significance and taking into account the adverse effects on rural character.*

Explanation

*The District Plan recognizes that marae are essential for Maori to maintain the traditional relationship with their land providing both a spiritual and cultural home for hapu and iwi. They are an important place where significant cultural events occur and serve as a multi-purpose community facility.*

Under S32(1)(a) Council must examine the extent to which the objectives of the proposal are the most appropriate way to achieve the purpose of the RMA **.**

Section 74 of the RMA also states that a territorial authority must prepare and change its district plan in accordance with the provisions of Part 2.

Analysis of the proposed plan change and the RMA requirements follow below.

5.2.2 Part 2 (Purpose & Principles) of the RMA

The purpose of the RMA is the sustainable management of natural and physical resources. Section 5 of the RMA defines sustainable management as “managing the use, development and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic and cultural wellbeing, and for their health and safety”.

Comment: Plan Change 3 directly provides for the continued use and development of marae in the Plains Production and Rural Zones. Marae are long established and there has been significant physical and cultural investment in them and the plan recognises this. The change will enable the Maori people and their communities to provide for their social, economic and cultural wellbeing by providing for marae as a permitted activity subject to standards to protect rural amenity.

Section 6 identifies “Matters of National Importance”. Section 6(e) identifies “the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga”. Section (g) identifies “the protection of protected customary rights”.

Comment: Plan Change 3 aligns with these aspects of protecting cultural traditions and customary rights.

Section 8 Treaty of Waitangi is also relevant to the proposed variation i.e. “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 principles of the Treaty of Waitangi (Te Tiriti o Waitangi)”.

Comment: Plan Change 3 aligns with Section 8.

5.2.3 Hawke’s Bay Regional Resource Management Plan (incorporating the Regional Policy Statement) 2012

Section 75 of the RMA states that a district plan must give effect to any regional policy statement. The relevant document is the Hawke’s Bay Regional Resource Management Plan (incorporating the Regional Policy Statement) 1 Jan 2012.

In Chapter 3 Regionally Significant Issues, Objectives and Policies and Under Section 3.1B “Managing the Built Environment” the relevant policies in relation to marae are shown below:

*Provision for papakainga and marae-based development (region)*

*POL UD6.1 District plans shall, where appropriate enable papakainga and marae-based development in accordance with tikanga Maori values, outside existing urban areas and any urban limits, provided development:*

*a) Avoids or mitigates the following locational constraints:*

*i. projected sea level rise as a result of climatic changes*

*ii. active coastal erosion and inundation*

*iii. stormwater infrastructure that is unable to mitigate identified flooding risk*

*iv. flood control and drainage schemes that are at or over capacity*

*v. active earthquake faults*

*vi. high liquefaction potential*

*vii. nearby sensitive waterbodies that are susceptible to potential contamination from on-site wastewater systems or stormwater discharges*

*viii. no current wastewater reticulation and the land is poor draining*

*ix. identified water short areas with the potential to affect the provision of an adequate water supply.*

*Papakainga and marae-based development (region)*

*POL UD6.2 Papakainga and marae-based development shall be encouraged, where possible; to:*

*a) Integrate with existing development*

*b) Integrate with the provision of strategic and other infrastructure (particularly strategic transport networks in order to limit network congestion, reduce dependency on private motor vehicles and promote the use of active transport modes).*

*c) Promote, and not compromise, social infrastructure including community, education, sport and recreation facilities and public open space.*

*Principal reasons and explanation*

*Housing and associated activities around rural marae have been in existence for many years. Provision is made for accommodating growth through papakainga and marae-based development on ancestral land, which may fall outside urban limits. The continuation and expansion of papakainga and other marae based activities, subject to relevant statutory processes, gives effect to the requirements of sections 6(e), 7(a) and 8 of the Act and also recognises the statutory provisions in the Te Ture Whenua Maori Act 1993. This policy provides tangata whenua with the potential to meet their housing and economic development needs.*

Comment: Plan Change 3 provides for marae and their use and development and is therefore consistent with POL UD6.2. Existing provisions in the current District Plan already address hazards and related infrastructural issues thereby aligning with POL UD6.1. It can be noted that provision for papakainga is already addressed in a separate section of the proposed plan (Section 21.1 Papakainga District Wide Activity).

Under Section 3.14 “Recognition of Matters of Significance to Iwi/Hapu” the relevant objectives and policies are:

*OBJECTIVE OBJ 34 To recognise tikanga Maori values and the contribution they make to sustainable development and the fulfilment of HBRC’s role as guardians, as established under the RMA, and tangata whenua roles as kaitiaki, in keeping with Maori culture and traditions.*

*POLICIES*

*POL 57 Where policy is being developed for the management of natural and physical resources the following matters shall be had regard to:*

*(a) Where the effects of an activity have minimal or no measurable impact on the state of mauri, the life sustaining capacity of a resource – no or minimal regulation (noa).*

*(b) Where the actual or potential effects of an activity on the state of mauri are significant – the activity shall be dealt with on a case-by-case basis according to those effects (rahui).*

*(c) Where the impacts of an activity have a severe and irreversible impact upon the state of mauri that activity shall be prohibited (tapu).*

Comment: Plan Change 3 recognises tikanga Maori values and provides for marae through minimum regulation as a permitted activity. Any potential adverse effects are avoided, remedied and mitigated through the application of standards.

**5.3 Whether the provisions in the proposal are the most appropriate way to achieve the objectives**

Under s32(b) Council must examine whether the provisions in the proposal are the most appropriate way to achieve the objectives by:

* Identifying other reasonably practicable options for achieving the objectives
* Assessing the efficiency and effectiveness of the provisions in achieving the objectives (including the benefits and costs of the environmental, economic, social and cultural effects under S32(2)(a)
* Summarizing the reasons for deciding on the provisions

To recap the Plan Change 3 adds a new objective and related policy as follows:

New objective:

*To recognize and provide for tangata whenua’s cultural and physical relationship with their land.*

New policy:

*To provide for the development and maintenance of marae in rural locations in recognition of their cultural significance and taking into account the adverse effects on rural character.*

The associated explanation states:

*The District Plan recognizes that marae are essential for Maori to maintain the traditional relationship with their land providing both a spiritual and cultural home for hapu and iwi. They are an important place where significant cultural events occur and serve as a multi-purpose community facility.*

5.3.1 Identifying other reasonably practicable options for achieving the objectives

There are three possible options to consider:

- To do nothing (leave Marae as a non-complying activity)

- To go ahead with the current proposal (provide for Marae as a permitted activity subject to conditions)

- To choose another activity status i.e. this would be a controlled or discretionary activity

The table below summarises the benefits, costs, efficiency and effectiveness of the 3 options.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Activity Status | Benefits | Costs | Efficiency | Effectiveness |
| Non-complying | This consent status is the most onerous, however, it does provide a very high level of scrutiny. In this case it is considered an over reach of regulation because the proposed plan change applies a robust set of standards that will protect existing rural amenity.  | Over-regulationHigher consenting costs and time expended | Low as a non-complying activity will not achieve the stated objective (to recognise and provide for tangata whenua’s cultural and physical relationship with their land) at the lowest cost to tangata whenua and the non-complying activity status will not provide any discernible additional benefit to the wider community. | Low as a non-complying activity does not provide any certainty of outcome - in this case the provision for the use and development of marae in rural locations. A non-complying activity can be refused.A robust set of standards will be applied to protect the existing rural character and amenity.  |
| Permitted | Certainty of outcomePermissive approach  | No consenting costs | High | High Existing and new plan standards to protect amenity  |
| Other activity status i.e. controlled, restricted discretionary, discretionary | These options would allow extra scrutiny for any application and give the Council the ability to set more conditions. However, it is considered that the proposed plan change applies existing and new standards that will be sufficient to protect rural amenity. Therefore there would be no additional environmental benefit. There would also be less certainty of outcome for the applicant (except for controlled activity status which would have to be approved). | Consenting costs and time expended | Less efficient | A permitted activity status with robust standards to protect amenity is considered the most effective approach. Consents will still be required for proposals outside the specified standards |

5.3.2 Assessing the efficiency and effectiveness of the provisions in achieving the objectives

Looking at the table it is considered that inserting provisions to identify marae as a permitted activity in the Plains Production Zone and the Rural Zone is the most practical option of achieving the objective and related policy.

This is preferable to a non-complying activity status which is more inefficient and ineffective.

Specifying another activity status such as a controlled, restricted discretionary or discretionary activity would mean a resource consent is required in all situations and this is considered to be a less efficient approach. This is not to say that a consenting process is not effective subject to suitable conditions and/or assessment criteria. In this case, however, this process should be reserved for those situations where proposals do not meet the district plan standards.

As far as the benefits and costs are concerned the permitted activity status gives the most benefit for the least cost. The benefits can be measured in the positive economic, social, and cultural outcomes for Maori through facilitating the development and use of marae in rural areas. There is also certainty of outcomes subject to meeting the specific thresholds identified by the district plan.

Specific standards have been set to protect the existing amenity for the zones. These are based on the previous district plan provisions for marae and have been aligned and integrated with the proposed plan standards.

The gross floor area for buildings that has been set at 1000m2. This is above the 400m2 threshold set in the former district plan. The provision has been based on feedback from the Waipuka Reservation Trust that submitted plans for a potential new marae complex (Waitangi Marae) at Waitangi Road, Waimarama. This provided a timely benchmark for the proposed plan change in relation to building area.

Another benchmark was provided in the provisions of Papakainga District Wide Activity of the Operative District Plan. This provides for housing on Maori land. Commercial and industrial buildings, to complement the residential activity, are provided for up to a maximum of 1000m2 maximum gross floor area. This coincides with the proposed 1000m2 for buildings associated with marae development in this proposed plan change.

The building footprint needs to be large enough to enable tangata whenua to carry out their cultural activities in a fit for purpose community facility without undue hindrance. The amenity of the rural environment will be protected by an existing set of standards and some specific additional standards. This means that the proposed provisions are both efficient and effective in achieving the stated objective and related policy i.e.

*To recognize and provide for tangata whenua’s cultural and physical relationship with their land.*

And;

*To provide for the development and maintenance of marae in rural locations in recognition of their cultural significance and taking into account the adverse effects on rural character.*

5.3.3 Assess the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the provisions.

Plan Change 3 provides for marae as a permitted activity in the Rural Zone and the Plains Production Zone.

There were provisions for the operation and development of marae in the 2003 Operative Plan. However these were omitted in the review process - hence making them non-complying.

The Council is aware that the current non-complying status of marae has been causing problems for Maori communities in the use and development of their marae.

There is little risk of acting because of uncertain or insufficient information. However, there is a real risk for the wellbeing of Maori communities if the status quo remains.

5.3.4 Summarising of the reasons for deciding on the provisions

The Operative District Plan does not explicitly provide for marae in the Plains Production Zone and Rural Zone and by default they are a non-complying activity.

In comparison, marae are specifically listed as a permitted activity in the Plains Settlement Zone of Paki Paki, Bridge Pa and Omahu.

There is need for a consistent approach in the provision of marae in all rural locations. A change to the Operative District Plan to identify marae as a permitted activity (subject to standards to protect amenity) is required.

Plan Change 3 will:

* Provide for marae, their use and development, in rural locations.
* Align with the requirements of the RMA including Section 5 (social, economic and cultural wellbeing), Section 6 (protection of customary rights) and 8 (Treaty of Waitangi).
* Align with the Hawke’s Bay Regional Resource Management Plan (provision for marae based activities outside the urban areas and to recognise tikanga Maori values)
* Be an efficient and effective way to meet the stated objective “To provide for marae their use and development” and related policy “To provide for marae in rural locations subject to any adverse effects being avoided, remedied or mitigated”

**6.0 CONCLUSION**

Plan Change 3 has been developed to identify marae as a permitted activity in the Rural Zone and the Plains Production Zone. This is to align with the way they are provided for in the Plains Settlement Zone and also to align with their provision in the former operative district plan. As assessed in this section 32 report the proposed plan variation is the most appropriate way to meet the purpose of the RMA and to achieve the stated objectives for the Rural Zone and Plains Production Zone.