

# **SECTION 42A REPORT**

Report on submissions and further submissions

**Topic: Chapter 35 – Hapori  
whānui**

**Report prepared by: Alex Bell**

**Dated: 7 June 2024**

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## List of submitters and further submitters addressed in this report

<b>Submitter no</b>	<b>Submitter name</b>	<b>Abbreviation</b>
10	Waikato Regional Council	WRC
17	Waka Kotahi NZ Transport Agency	Waka Kotahi
35	Te Ruunanga o Ngaati Mahuta ki te Hauaauru	TRNMTH
38	Te Tokanganui-a-noho Whare	TTRMC
46	Federated Farmers	FF
47	Royal Forest and Bird protection Society of New Zealand Incorporated	F&B
50	Te Nehenehenui Trust	TNN
53	Department of Conservation	DOC
FS03	Department of Conservation	DOC
FS20	Sheryl Paekau	Sheryl Paekau

# **1. Introduction**

## **1.1 Qualifications and Experience**

1. My name is Alex Bell. I am employed by the Waitomo District Council as the General Manager – Strategy and Environment.
2. I hold the qualifications of Bachelor of Laws, Graduate Diploma in Environmental Planning and am completing my Post Graduate Diploma in Environmental Planning from the University of Waikato.
3. I have been employed in legal and planning roles in private practice, central government and local government for approximately 10 years. I have been employed by Council as the General Manager – Strategy and Environment since June 2021. In this role I am responsible for the Proposed Waitomo District Plan proceeding through the process under Schedule 1 of the RMA and the administration of the Operative Waitomo District Plan.

## **1.2 Code of Conduct**

4. I confirm that I have read the Code of Conduct for Expert Witness in the Environment Court Practice Note 2014 and that I have complied with it when preparing this report. Other than when I state that I am relying on the advice of another person, this evidence is within my area of expertise. I have not omitted to consider material facts known to me that might alter or detract from the opinions that I express.
5. I am authorised to give this evidence on the Council's behalf to the Proposed District Plan hearings commissioners.

## **1.3 Conflict of Interest**

6. I confirm that I have no real or perceived conflicts of interest.

## **1.4 Preparation of this report**

7. This report considers the submissions and further submissions that were received in relation to Chapter 35 – Hapori whānui.
8. The data, information, facts, and assumptions I have considered in forming my opinions are set out in my evidence. Where I have set out opinions in my evidence, I have given reasons for those opinions. I have not omitted to consider material facts known to me that might alter or detract from the opinions expressed.

## **2 Scope of Report**

### **2.1 Matters addressed by this report**

9. This report is prepared in accordance with Section 42A of the Resource Management Act 1991. This report considers submissions and further submissions that were received by the Council in relation to the provisions of Chapter 35 Hapori whānui within the Proposed Waitomo District Plan. Chapter 35 Hapori whānui makes provisions for community wellbeing, safety and amenity. Other effects and activities are addressed in various Section 42A reports, such as temporary activities, ecosystems and indigenous biodiversity and the noise chapters.

### **2.2 Overview of the topic / chapter**

10. Overall, this Chapter seeks to provide for community wellbeing, safety and amenity by addressing a number of matters, which include:
  - Enhancing amenity by providing for public art, murals, pou and carved gateways.
  - Maintain amenity by addressing matters such as domestic scale television aerials, satellite dishes and water tanks which if poorly located, have the potential to create a nuisance or detract from the character and amenity of the district's townships and rural areas.
  - Provide for vegetation clearance outside of significant natural areas and community gardens. These activities are appropriate in most locations in the district.
  - Manage potential nuisances may include buildings and sites that are left unfinished or in a state of disrepair, that are not maintained or are damaged by fire and left in a state of disuse.
  - Provides Council with the option to temporarily uplift individual provisions associated with land use activities in the event of the declaration of a state of emergency which results in the requirement for a period of significant recovery.
11. The Chapter applies across all zones, unless stipulated otherwise.

### **2.3 Statutory Requirements**

12. The PDP has been prepared in accordance with the Council's functions under the RMA, specifically section 31, Part 2 and the requirements of sections 74 and 75, and its obligation to prepare, and have particular regard to, an evaluation report under section 32. The section 32 report which addresses this Chapter sets out how the relevant national policy statements, national environmental standards, provisions of the Waikato Regional Policy Statement, the Manawatū-Whanganui One Plan, the

Maniapoto Environmental Management Plan, the Waikato Tainui Environment Management Plan 2018 and Te Ture Whaimana o Te Awa o Waikato - The Vision and Strategy for the Waikato River have been assessed and considered.

## 2.4 Procedural matters

13. At the time of writing this Section 42A report there have not been any pre-hearing conferences, clause 8AA meetings or expert witness conferencing in relation to submissions on this topic.

## 3 Consideration of submissions received

### 3.1 Overview of submissions

14. A total of 19 submissions and 14 further submissions were received. 13 of the submissions supported the retention of various provisions as notified. Two submissions support the provisions as notified with an amendment to the spelling of "maara kai" to "māra kai". 3 submissions have been received relating to vegetation clearance outside significant natural areas. One submission has requested that consultation be undertaken with Waka Kotahi when Pouwhenua, waharoa and public art (including murals) if the structure is within the state highway road reserve or visible from the state highway network.

### 3.2 Structure of this report

15. Given the relatively low number of submissions and further submissions received on this chapter, the Section 42A report is structured by submissions that have requested retention of the provisions as notified, and then those seeking relief thereafter.
16. The assessment of submissions generally follows the following format: submission information; relief sought by the submitter, the recommendation and if required, any amendments to the plan.

### 3.3 Submissions seeking retention of existing provisions

17. The submissions below have all sought retention of various provisions as notified, and no other submission points have been received on these provisions, or any further submissions opposing the relief sought.

Submission no	Submitter	Support / in part / oppose	Plan provision	Relief sought	Recommendation
38.84	Te Tokanganui	Support	HW-O3	Retain HW-O3 as notified.	Accept

Submission no	Submitter	Support / in part / oppose	Plan provision	Relief sought	Recommendation
	-a-noho Whare (TTRMC)				
FS20.113	Sheryl Paekau	Support		I seek that the whole of all submissions provided by Te Kohanganui Whare be allowed and to take into account my support in part when applied to limiting numbers of dwellings on Maaori land.	Accept
50.25	Te Nehenehenui (TNN)	Support with amendment	HW-O3. HW-P4. HW- R11. HW-P4. HW-P5. HW- P6.1. HW- R1. HW- R5.	Retain the following provisions in the Hapori whānui chapter: HW- O3. HW-P4. HW-R11. HW-P4. HW-P5. HW-P6.1. HW-R1. HW-R5.  Amend spelling from maāra kai to māra kai in this chapter.	Accept
FS20.223	Sheryl Paekau	Support		I seek that the whole of all submissions provided by Te Nehenehenui Trust be allowed and to take into account my support in part when applied to limiting numbers of dwellings on Maaori land	Accept
FS20.239	Sheryl Paekau	Support in part		I seek that this submission be given consideration and take into account the barriers that Maaori must overcome in order to use their land sustainably in the future.	Accept
38.85	TTRMC	Support	HW-P4	Retain HW-P4 as notified.	Accept
FS20.114	Sheryl Paekau	Support		I seek that the whole of all submissions provided by Te Kohanganui Whare be allowed and to take into account my support in part when applied to limiting numbers of dwellings on Maaori land.	Accept
38.86	TTRMC	Support	HW-P5	Retain HW-P5 as notified.	Accept
FS20.115	Sheryl Paekau	Support		I seek that the whole of all submissions provided by Te Kohanganui Whare be allowed and to take into account my support in part when applied to limiting numbers of dwellings on Maaori land.	Accept
38.87	TTRMC	Support	HW-P6.1	Retain HW-P6.1 as notified.	Accept

Submission no	Submitter	Support / in part / oppose	Plan provision	Relief sought	Recommendation
FS20.116	Sheryl Paekau	Support		I seek that the whole of all submissions provided by Te Kohanganui Whare be allowed and to take into account my support in part when applied to limiting numbers of dwellings on Maaori land.	Accept
35.10	Te Ruunanga o Ngaati Mahuta ki te Hauaauru	Support	HW-R1	Retain HW-R1 Provisions which provide for customary cultural activities as permitted activities as notified.	Accept
FS20.10	Sheryl Paekau	Support		I seek that the whole of all submissions provided by the Ruuananga be allowed.	Accept
38.88	TTRMC	Support	HW-R1	Retain HW-R1 as notified.	Accept
FS20.117	Sheryl Paekau	Support		I seek that the whole of all submissions provided by Te Kohanganui Whare be allowed and to take into account my support in part when applied to limiting numbers of dwellings on Maaori land.	Accept
35.11	TRNMTH	Support	HW-R5	Retain HW-R5 provisions which provide for customary cultural activities as permitted activities as notified.	Accept
FS20.11	Sheryl Paekau	Support		I seek that the whole of all submissions provided by the Ruuananga be allowed	Accept
38.89	TTRMC	Support	HW-R5	Retain HW-R5 as notified.	Accept
FS20.118	Sheryl Paekau	Support		I seek that the whole of all submissions provided by Te Kohanganui Whare be allowed and to take into account my support in part when applied to limiting numbers of dwellings on Maaori land.	Accept
16.25	Fire and Emergency New Zealand (FENZ)	Support	HW-R6	Retain as notified.	Accept

### Analysis and recommendation

18. It is considered that the relief sought by the submitters to retain these provisions as notified is accepted.

19. Section 32AA: No changes are recommended as a result of these submissions. A section 32AA evaluation is not required.

### 3.4 General Comment / entire chapter - Hapori whānui

20. Three submissions and three further submissions were received on either the Chapter as a whole, or provided general comments on the Chapter as a whole.

Submission no	Submitter	Support / in part / oppose	Plan provision	Relief sought	Recommendation
38.83	TTRMC	Support with amendment	Entire chapter	Amend Chapter 35 Hapori whanui to correct spelling from "maara kai" to "māra kai".	Accept
FS20.112	Sheryl Paekau	Support		I seek that the whole of all submissions provided by Te Kohanganui Whare be allowed and to take into account my support in part when applied to limiting numbers of dwellings on Maaori land.	Accept
10.125	Waikato Regional Council (WRC)	Support	General	No specific relief sought.	Accept
50.25	TNN	Support with amendment	HW-O3. HW-P4. HW- R11. HW-P4. HW-P5. HW-P6.1. HW-R1. HW- R5.	Retain the following provisions in the Hapori whānui chapter: HW- O3. HW-P4. HW-R11. HW-P4. HW-P5. HW-P6.1. HW-R1. HW-R5.  Amend spelling from māra kai to māra kai in this chapter.	Accept
FS20.223	Sheryl Paekau	Support		I seek that the whole of all submissions provided by Te Nehenehenui Trust be allowed and to take into account my support in part when applied to limiting numbers of dwellings on Maaori land	Accept
FS20.239	Sheryl Paekau	Support in part		I seek that this submission be given consideration and take into account the barriers that Maaori must overcome in order to use their land sustainably in the future.	Accept

#### Analysis and recommendations

21. Te Tokanganui-a-noho support the provisions this chapter as notified and Te Nehenehenui have supported HW-O3, HW-P4, HW- R11, HW-P4, HW-P5, HW-P6.1, HW- R1 and HW- R5. Both submitters have requested an

amendment to the spelling of maara kai” to “māra kai”. Māra kai is defined in Chapter 11 as:

*sustainable community gardens which include community vegetable gardens, orchards and food forests*

22. It is noted that the spelling of māra kai in Chapter 11 is consistent with the relief sought by the submitters.
23. Policy HW-P6.4 provides for ensuring provision is made for maara kai in all zones and Rule HW-R5 provides for maara kai as a permitted activity. It is considered that an amendment should be made to HW-P6.4 and HW-R5 to correct the spelling to align with the spelling in Chapter 11 – Glossary and the relief sought by the submitters.
24. Section 32AA: The recommended amendment provides consistency with the spelling in Chapter 11 – Glossary. The amendment does not affect the policy framework or rules. A section 32AA evaluation is not required.

### 3.5 Clearance of vegetation outside of significant natural areas

25. Three submissions and one further submission were received on the clearance of vegetation outside of a significant natural area.

Submission no	Submitter	Support / in part / oppose	Plan provision	Relief sought	Recommendation
47.164	Royal Forest and Bird protection Society of New Zealand Incorporated (F&B)	Oppose	Overview	Amend the overview of the Hapouri whānui chapter as follows: <del>These activities are appropriate in most locations in the district.</del> And Amend the subsequent sentence in the overview of the Hapouri whānui chapter to state that rules may apply to vegetation clearance in any area.  And  Any consequential changes or alternative relief to achieve the relief sought.	Reject
47.165	F&B	Oppose	HW-R8	Add or Amend the note under HW-R8 to refer to the need to comply with ECO rules, including ECO-RA relating to the clearance of indigenous	Reject

Submission no	Submitter	Support / in part / oppose	Plan provision	Relief sought	Recommendation
				vegetation for fencing, which apply outside SNAs as sought in this submission.	
10.126	WRC	Oppose	HW-R8	Move this rule to the ECO chapter and prescribe environmental standards and clearance limits. Additionally, include environmental standards relating to the protection of bat habitats and the corridors of mobile fauna.	Reject
FS03.53	Director-General of Conservation	Support		Allow	Reject

### Analysis and recommendations

26. Forest and Bird have requested an amendment to the Overview of the Chapter as follows.

*This chapter also provides for vegetation clearance outside of significant natural areas and community gardens. ~~These activities are appropriate in most locations in the district.~~ These rules may apply to vegetation clearance in any area. In some places additional rules may apply to vegetation clearance and earthworks close to water bodies, the coastline, cave entrances or if a site is scheduled or has an overlay identified on it.*

27. This chapter provides for vegetation clearance outside of significant natural areas and community gardens. In some places additional rules may apply to vegetation clearance and earthworks close to water bodies, the coastline, cave entrances or if a site is scheduled or has an overlay identified on it.
28. It is considered that the amendment proposed by Forest and Bird is not required, as the wording of the Overview as notified puts a plan user on sufficient notice that vegetation clearance outside of a Significant Natural Area may be subject to rules in other zones and overlays.
29. Both Forest and Bird and the Waikato Regional Council have opposed Rule HW-R8, which deals with vegetation clearance outside Significant Natural Areas. Forest and Bird have sought that the note under this rule either be amended or and additional note added to refer to the need to comply with ECO rules, including ECO-RA relating to the clearance of indigenous vegetation for fencing, which apply outside SNAs as sought in this submission. The note as notified is set out below:
30. *Note: Unless there is another provision in the plan stating the contrary, digging holes for fence posts, domestic gardening and clearing non-indigenous vegetation and indigenous vegetation outside of an SNA are permitted. In the General Rural Zone see rule GRUZ-R15. Plan users are*

also advised to check the provisions of NATC - Table 1 – Activities Rules for earthworks and vegetation clearance adjacent to waterbodies, CEH - Table 1 – Activities Rules for earthworks adjacent to the coastal marine area and the applicable zone provisions relating to earthworks or clearance of vegetation within a 20 m radius of an entry or opening into any cave or sinkhole. In addition, some overlays, scheduled sites and features have provisions which prevail over HW-R7 and HW-R8.

31. It is considered that this amendment is not necessary, as the rule is specific that it deals with the clearance of vegetation (not indigenous vegetation) outside of significant natural areas, and the wording of the note as notified provides sufficient guidance to plan users regarding when they may need to review additional chapters in the plan before carrying out any vegetation clearance outside of a significant natural area.
32. The Waikato Regional Council have requested that Rule HW-R8 be moved to Chapter 26 – Ecosystems and indigenous biodiversity and prescribe environmental standards and clearance limits. Additionally, include environmental standards relating to the protection of bat habitats and the corridors of mobile fauna. This matter will be addressed in the Ecosystems and Indigenous Biodiversity Chapter.
33. On the basis that the submission from the Waikato Regional Council has been rejected, the further submission from the Director-General of Conservation in support of that submission is rejected also.
34. Section 32AA: No changes are recommended as a result of these submissions. A section 32AA evaluation is not required.

### **3.6 HW-R11 - Pouwhenua, waharoa and public art (including murals)**

35. One submission was received on this provision from Waka Kotahi.

<b>Submission no</b>	<b>Submitter</b>	<b>Support / in part / oppose</b>	<b>Plan provision</b>	<b>Relief sought</b>	<b>Recommendation</b>
17.85	Waka Kotahi	Support in part	HW-R11	(e) <u>The outcome of consultation with Waka Kotahi New Zealand Transport Agency if the structure is within the state highway road reserve or visible from the state highway network.</u>	Accept in part
50.25	TNN	Support with amendment	HW-R11.	Retain the HW-R11.	Accept
FS20.223	Sheryl Paekau	Support		I seek that the whole of all submissions provided by Te	Accept.

Submission no	Submitter	Support / in part / oppose	Plan provision	Relief sought	Recommendation
				Nehenehenui Trust be allowed and to take into account my support in part when applied to limiting numbers of dwellings on Maaori land	
FS20.239	Sheryl Paekau	Support in part		I seek that this submission be given consideration and take into account the barriers that Maaori must overcome in order to use their land sustainably in the future.	Accept.

36. HW-R11 provides for pouwhenua, waharoa and public art (including murals) as a permitted activity in all zones. Waka Kotahi have sought an amendment to the matters of discretion for HW-R11 to require consultation where the structure is visible from the state highway network. Their requested relief is set out as follows:

*(e) The outcome of consultation with Waka Kotahi New Zealand Transport Agency if the structure is within the state highway road reserve or visible from the state highway network.*

37. The rule currently provides the following note:

*Note: Any public art or structure proposed to be located on road reserve requires permission from the road controlling authority being Waitomo District Council or the New Zealand Transport Agency.*

38. HW-R11 enables pouwhenua, waharoa and public art (including murals) as a permitted activity provided, they are not digital, have flashing or revolving lights or lasers, comply with the minimum setbacks from internal boundaries and height standards for the relevant zone, and comply with the height standards for the closest adjacent zone when they are to be located within a road reserve or designation boundary.

39. The plan's provisions favour the management of effects of pouwhenua, waharoa and public art on the site/directly in front of the site where the activity is carried out. It is considered that the proposed amendment is a little broad. The preference would be for consultation with Waka Kotahi to be required where the public art or structure is located adjacent to the state highway network, rather than simply visible from the state highway network. The effects of most static public art or structures visible from the state highway are likely to be negligible. The proposed amendment could result in public art or structures that have absolutely no effect on the state highway network or are some distance from it, being captured by the

requirement to consult with Waka Kotahi. However, it is considered appropriate for public art or structures that have digital components visible from the state highway to require consultation with Waka Kotahi. Accordingly, it is recommended that an additional matter of discretion be added as follows:

*(e) The outcome of consultation with Waka Kotahi New Zealand Transport Agency if the structure is within the state highway road reserve or **has digital components** visible from the state highway network.*

40. Section 32AA: The amendment is considered to be minor in nature and scale and a section 32AA evaluation is not required.

## **4 Conclusion**

41. Submissions have been received in support of, and in opposition to the notified provisions of the proposed district plan. Having considered all the submissions and reviewed all relevant statutory and non-statutory documents, it is recommended that the proposed district plan should be amended as set out in Appendix 1 of this report.
42. The recommended amendments to HW-P6 and HW-Table 1 are to provide clarification and consistency with other chapters and various statutory documents. Accordingly, no section 32AA evaluation has been required to be undertaken with respect to these changes.
43. It is considered that the proposed provisions, with the recommended amendments, will be the most appropriate means to:
- Achieve the purpose of the Resource Management Act 1991 (RMA) where it is necessary to revert to Part 2 and otherwise give effect to higher order planning documents, in respect to the proposed objectives; and
  - Achieve the relevant objectives of the PDP, in respect to the proposed provisions.

# APPENDIX 1 RECOMMENDED AMENDMENTS

**HW-P6.** Encourage community cultural, environmental and physical wellbeing and the appropriate use of the district’s natural and physical resources, by:

1. Providing for Māori cultural and customary uses of natural resources; and
2. Enabling conservation activities and activities undertaken for scientific purposes; and
3. Enabling passive recreation activities; and
4. Enabling vegetation clearance outside of significant natural areas; and
5. Ensuring provision is made for m̄ara kai in all zones.

**HW - Table 1 - Activities Rules**

<b>The rules in this table apply to all zones unless otherwise specified</b>	
HW-R1.	<a href="#">Māori cultural and customary uses</a>
HW-R2.	Activities undertaken for <a href="#">scientific purposes</a>
HW-R3.	Passive recreation
HW-R4.	<a href="#">Conservation activities</a>
HW-R5.	<a href="#">Māra kai</a>

<b>HW-R11. <a href="#">Pouwhenua, waharoa</a> and public art (including murals)</b>	
<p><b>Activity Status: PER</b></p> <p><b>Where:</b></p> <ol style="list-style-type: none"> <li>1. The public art or structure must not be digital, have flashing or revolving lights or lasers; and</li> <li>2. The public art or structure must comply with the minimum setback from internal boundaries and height standards for the relevant zone; and</li> <li>3. The public art or structure may be located within a road reserve or designation boundary but must comply with the height standards for the closest adjacent zone.</li> </ol> <p><i>Note: If the public art or structure contains a sign then the provisions of the <a href="#">signs chapter</a> apply to the sign.</i></p>	<p><b>Activity status where compliance is not achieved: RDIS</b></p> <p><b>Matters over which discretion is restricted:</b></p> <ol style="list-style-type: none"> <li>(a) Positive cultural and social benefits; and</li> <li>(b) The extent to which the key moves in the relevant town concept plan has been considered and provided for; and</li> <li>(c) Potential positive or adverse effects on the safety of transport network users; and</li> <li>(d) The extent and effect of non-compliance with any relevant rule in the zone and any relevant matter of discretion in the rule.</li> <li>(e) <a href="#">The outcome of consultation with Waka Kotahi New Zealand Transport Agency if the structure is</a></li> </ol>

<p><i>Note: Any public art or structure proposed to be located on Waitomo District Council reserves, land or buildings requires the approval of Waitomo District Council.</i></p> <p><i>Note: Any public art or structure proposed to be located on road reserve requires permission from the road controlling authority being Waitomo District Council or the New Zealand Transport Agency.</i></p>	<p><a href="#">within the state highway road reserve or has digital components visible from the state highway network.</a></p>
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<p><a href="#">HW-R14.</a></p>	<p><b><a href="#">Burying of material infected by unwanted organisms as declared by Ministry for Primary Industries Chief Technical Officer or an emergency declared by the Minister under the Biosecurity Act 1993</a></b></p>
<p><b>Activity Status: PER</b></p> <p><b>Where:</b></p> <ol style="list-style-type: none"> <li><a href="#">The activity does not occur in the residential, settlement, tourism, Māori purpose or commercial zones; and</a></li> <li><a href="#">The activity does occur not within 20 m of a water body or the coastal marine area or within a 20 m radius of an entry or opening into any cave or sinkhole.</a></li> </ol>	<p><b>Activity status when compliance is not achieved: NC</b></p>