

Aide Memoire

Ruataniwha Water Storage Scheme Consultation Process

Transparent Hawke's Bay

April 2013

TRANSPARENT HAWKE'S BAY

- 1 Transparent Hawke's Bay is a soon to be incorporated society, chaired by Pauline Elliot and comprised of concerned Hawke's Bay ratepayers, that has been established to strive for open process, reliable information and public involvement in the decision-making of Hawke's Bay's regional and territorial authorities.

EXECUTIVE SUMMARY

- 2 Transparent Hawke's Bay is concerned that the Hawke's Bay Regional Council ("HBRC") has not complied with its statutory consultation obligations in relation to the proposed Ruataniwha Water Storage Project ("RWSP").
- 3 In particular, we are concerned that HBRC has failed to comply with its obligations under the Resource Management Act 1991 ("RMA") and the Local Government Act 2002 ("LGA") in respect of consultation on plan changes required to progress the RWSP. As a consequence, we consider that any request by the HBRC to you as Minister for the Environment to call in the Plan Change at this stage would be in breach of section 143 of the RMA and unlawful.
- 4 We have also identified significant flaws with the way in which the RWSP was described during consultation on the HBRC Long Term Plan 2012-2022, including late and un-notified changes to the estimated costs of the RWSP which have significantly changed the likely ownership structure and the attendant ratepayer risks.
- 5 We consider that before a formal and expensive RMA process is undertaken, the people of Hawke's Bay need further time to consider and provide the HBRC with feedback on whether the RWSP and Plan Change should be pursued.

RUATANIWHA WATER STORAGE PROJECT

- 6 The Ruataniwha Water Storage Project involves the construction of a dam on the Makaroro River in the Hawke's Bay and is intended to provide irrigation for 17,000 – 22,000 hectares of land, with potential for 6.5 megawatts of hydro-electric power generation.
- 7 HBRC adopted Tukituki Plan Change 6 on 27 February 2013 ("the Plan Change") which would potentially enable the project to obtain resource consent. The Plan Change will be publicly notified in May 2013.
- 8 HBRC's subsidiary, Hawkes Bay Regional Investment Company ("HBRIC") is preparing the necessary resource consent applications, which it will lodge directly with the Environmental Protection Agency ("EPA") in May 2013.
- 9 The HBRC is intending to request a call-in of the Plan Change by you, as Minister for the Environment, under section 142 of the Resource Management Act 1991 ("RMA"), so that it may be considered alongside the resource consent applications.

TUKITUKI PLAN CHANGE 6: KEY CONCERNS

- 10 As Minister for the Environment, you may call in a matter that has been lodged with a local authority and is (or is part of) a proposal of national significance, and refer that matter to a Board of Inquiry or the Environment Court for decision.
- 11 Importantly, however, under section 143 a regional council may not request that the Minister call a matter in unless it has first complied with the consultation provisions in clauses 2, 3, and, if relevant, 4 of Schedule 1 to the RMA.

- 12 We are concerned that the HBRC has not complied with these consultation provisions, and any request to you to call in the Plan Change at this stage would be in breach of section 143 and unlawful.

Consultation requirements

- 13 Clause 3 of Schedule 1 to the RMA provides:

- (1) During the preparation of a proposed policy statement or plan, the local authority concerned shall consult—
- (a) the Minister for the Environment; and
 - (b) those other Ministers of the Crown who may be affected by the policy statement or plan; and
 - (c) local authorities who may be so affected; and
 - (d) the tangata whenua of the area who may be so affected, through iwi authorities; and
 - (e) any customary marine title group in the area.
- (2) **A local authority may consult anyone else during the preparation of a proposed policy statement or plan.**
- ...
- (4) **In consulting persons for the purposes of subclause (2), a local authority must undertake the consultation in accordance with section 82 of the Local Government Act 2002.**

[Emphasis added]

- 14 Where a local authority has decided to consult with others during the preparation of a proposed policy statement or plan under clause 3(2), it must do so in accordance with the principles set out in section 82 of the LGA, which include:
- (a) providing reasonable access to relevant information in a manner and format that is appropriate to the preferences and needs of those persons;
 - (b) ensuring clear information is given concerning the purpose of the consultation and the scope of the decisions to be taken following consultation;
 - (c) providing parties with a reasonable opportunity to present their views;
 - (d) receiving the views presented to the local authority with an open mind and giving those views due consideration; and
 - (e) providing information concerning both the relevant decisions and the reasons for those decisions.

- 15 In so doing, the local authority must have regard to the significance of the decision. We note that the RWSP has been identified as a project of significance by HBRC.

Concerns with consultation process

- 16 The HBRC consulted with the public on the Plan Change in the following ways:
- (a) Establishing a Stakeholder Working Group in May 2010 (“the Working Group”);

- (b) Public notification of the RWSP in the HBRC Draft Long Term Plan 2012-22, released in April 2012; and
- (c) Release of the public discussion document, *Tukituki Choices* in September 2012, which presented four different scenarios for water management in the Tukituki catchment, two of which assumed that the RWSP had gone ahead.

17 We are concerned that this consultation was not carried out in accordance with section 82 of the LGA for the following reasons:

(a) **The public were not provided with reasonable access to relevant information.** In particular:

- (i) Two key economic and environmental impact reports known as the Macfarlane Report (a study of land use practices within the potential footprint of the project, how these might change, and the economic and environmental impacts of such change), and the Butcher Regional Economic Report were relied on by HBRC staff in their presentations to the Working Group through 2012, but were not released until September 2012 – the same month HBRC staff presented the Final Project Feasibility Report to Council, and only 3 weeks prior to submissions closing on the *Tukituki Choices* document;
- (ii) The *Tukituki Choices* document itself provided a simplistic explanation of the expected economic, environmental and social impacts of in each scenario, and was clearly biased towards the RWSP going ahead. Indeed, in a joint statement, key environmental organisations in the Hawke’s Bay described the document as “fatally flawed”. We **attach** a copy of this statement for your information. The document was also described by an HBRC councillor (and a supporter of the RWSP) as “thinly disguised propaganda”;
- (iii) The Draft Long Term Plan did not provide information on the wider costs associated with the project, such as the expenses local farmers would face (\$300 to \$400 million) if the scheme went ahead. Information on other key dependencies – such as the level of local farmer investment in the scheme – were also not included in the Draft Long Term Plan;
- (iv) The public were also not informed of an increase to the estimated cost of the RWSP in the Final Long Term Plan, which we discuss further below.

(b) **HBRC did not provide parties with a reasonable opportunity to present their views.** In particular:

- (i) The public were given only 4 weeks to comment on the *Tukituki Choices* document, an inadequate consultation period given that the public had received little prior information on the proposals contained in that document. HBRC held no public hearings on the discussion document, despite assurances from the HBRC to the Working Group it would “workshop” the scenarios with a “wider reference group”;
- (ii) The public were not provided with adequate information to present informed views on the *Tukituki Choices* scenarios;
- (iii) The Working Group was not given an adequate opportunity to feed in to the Plan Change process. In particular, Working Group meetings were almost entirely consumed by HBRC briefings, instead of operating as a forum for

members to provide feedback to the Council on the RWSP proposals. Insufficient background research and information was provided to the Working Group to enable members to provide informed responses to HBRC proposals, particularly with respect to the Plan Change;

- (c) **Views presented by the public during consultation were not received by HBRC with an open mind, nor were they given due consideration.** In particular:
- (i) Of the 164 comments received on the *Tukituki Choices* document, 102 submitters opposed the Ruataniwha Dam, and a further 13 were neutral – most complaining of insufficient information to make an informed judgment;
 - (ii) Only 81 submitters to the Draft Long Term Plan commented on the RWSP (out of the many hundreds of submissions received by the HBRC). Most people who did submit on the RWSP either opposed it (43 in total) or, given the superficial treatment of the RWSP in the draft Plan, complained that they were in no position to make a judgement about the project or the HBRC investment due to a lack of information (26 in total).
- (d) **The public were not provided with reasons for HBRC's decision to proceed with the Plan Change.**

- 18 We note that the Plan Change will be notified by HBRC in early May 2013. However, we remain concerned that the public will not be given sufficient information during this process to enable them to make an informed response on the proposed Plan Change. We are also concerned that the public will not be given sufficient time to review and process any further information provided by the Council, as it is intending that the public notification process run for 20 working days only.

CONCERNS WITH THE HAWKE'S BAY REGIONAL COUNCIL LONG TERM PLAN

- 19 In addition to the failures in respect of section 82 consultation principles noted above, we are also concerned that HBRC made significant changes to the RWSP in the Final Long-Term Plan without informing the public.
- 20 At the time the public had an opportunity to comment on the RWSP in the Draft Long-Term Plan (between 10 April and 16 May 2012) the estimated cost of the project was \$170 million with a planned HBRC investment of \$80 million which it was signalled would secure 51 per cent HBRC ownership of the scheme.
- 21 On 11 June 2012 the HBRC staff made their own submission on the draft plan (relevant extracts **attached**). The submission noted that the cost of the RWSP should be re-stated in the final long-term plan at \$230 million. Significantly, the staff recommended that HBRC investment remain at \$80 million to avoid the need for further consultation, with the consequence that the HBRC may have a less than 51 per cent share in the equity of the scheme.
- 22 The RWSP as described in the Final Long-Term Plan is therefore in key respects fundamentally different to the project as described in the draft plan and which the public had an opportunity to comment upon.
- 23 In particular, the revised ownership structure gives rise to a range of attendant risks. For example, the safety of the Port of Napier – which is wholly owned by HBRIC and is therefore a major asset of the region – has not been assured. If the RWSP is not profitable and the HBRC goes into deeper debt, the port will be jeopardised as loan collateral; further the port's dividend paid to HBRC, projected at \$6.55 million or 17 per

cent of HBRC's operating budget in 2013-14, would be jeopardised in future years, increasing ratepayer exposure considerably.

- 24 Secondly, the HBRC have breached the obligations to provide information on the project in the statement of proposal as required by s 84(3).
- 25 The project would alter significantly the intended level of service provision in relation to water storage, supply and irrigation in particular, and is therefore an activity to which section 97(1)(a) of the LGA applies. Current irrigation arrangements, in which farmers have already invested millions of dollars and which require no ongoing payment for water, would be replaced by a scheme requiring hundreds of millions in new on-farm investment, plus ongoing water charges, whether or not contracted water is actually used. Accordingly, it was incumbent on the HBRC to provide the details required by section 84(3) of the LGA, including an analysis of the reasonably practicable alternative options.
- 26 HBRC took advice from Audit New Zealand on the impact on the LTP process if the Council's commitment to the project increased or decreased from \$80 million. Audit New Zealand advised that, in their opinion, a LTP process issue would arise if HBRC is required to commit significantly more than \$80 million (a figure of over 10% additional funding was mentioned by Audit New Zealand in their discussions with HBRC). Audit New Zealand stated that, in their opinion, such an increase would trigger an amendment to the LTP and this amendment would need to be consulted on.
- 27 We submit that a change to the project resulting in HBRC losing its 51% controlling interest also triggers an amendment to the LTP which should have been consulted on by HBRC.
- 28 We have raised these concerns with the Auditor General and requested that she conduct an investigation into HBRC's compliance with its obligations under the LGA. We are also considering other options available to challenge HBRC's decision to proceed with the RWSP in these circumstances.

CONCLUSION

- 29 We consider that before a formal and expensive RMA process is undertaken, the people of Hawke's Bay need further time to consider all financial (including debt), ownership, and environmental risk factors associated with the HBRC proposals and provide the HBRC with feedback on whether the RWSP and Plan Change should be pursued.
- 30 While they are not a party to this request of Transparent Hawke's Bay, we are aware that Ngati Kahungunu, representing the largest iwi in Hawke's Bay, has proposed to HBRC a six month delay in the consideration process. Other entities and individuals in Hawke's Bay have also called for a pause in the process before any call-in, and we can provide information on those if requested.
- 31 We would appreciate the opportunity to meet with you to discuss these concerns, or provide further information.

ATTACHMENT 1

6 September 2012

Dear Chairman Wilson and Councillors,

As members of the Ruataniwha Water Storage Stakeholders Group, we are writing to inform you of our extreme disappointment with the "Tukituki Choices" public consultation document.

Our concerns are threefold.

First at the 27 July Stakeholders meeting, during remarks made by Andrew Newman, Tom Belford requested that a draft of this document be circulated to all members of the Group – as the parties most intimately familiar with the issues and concerns that such a document should fairly present – for comment prior to its being finalized and released. Debbie Hewitt (Chairperson) and Graeme Hansen (Project Manager) agreed that this would occur. That advance circulation unfortunately did not occur.

We consider that a serious breach of trust, which accounts in part for shortcomings in the document that render it deceptive as a public consultation tool.

Second, very significant issues of science, and assumptions and conclusions associated with that science, remain in dispute. These are considered serious enough that HBRC has agreed to a 'science caucusing' on those issues.

However, in the meantime, HBRC has elected to incorporate its view of the issues in the "Tukituki Choices" document, significantly biasing the presentation, if not in fact misrepresenting key matters, such as the extent of environmental protection actually provided in differing scenarios, the extent of mitigation measures required to deal effectively with ecological concerns, the cost of such measures, and therefore the underlying economics of the project.

Third, anticipating the previous point, it was also requested (at the 17 August meeting of the Land Use Intensification Working Group) that the "Tukituki Choices" document at least present the fact that environmental representatives were still challenging several of the key science-grounded aspects of the work HBRC has undertaken, so that the public would be clearly informed about those concerns.

That request unfortunately was ignored.

Given these concerns, we consider that "Tukituki Choices" is fatally flawed as a public consultation document. It is biased, inaccurate on key points, silent about key issues still under review (and their significance), and therefore misleading.

All of these concerns were reiterated at the 31 August meeting of the Stakeholders Group, and dismissed.

Under the circumstances, we have no recourse but to make our views known to the public by releasing this letter to the media.

Kind regards,

John Cheyne (Te Taiao Hawkes Bay Environment Forum)
Grenville Christie (Central Hawkes Bay Branch Forest and Bird)
Vaughan Cooper (Hastings-Havelock Branch Forest and Bird)
Pete McIntosh (Fish and Game Hawkes Bay Region)
Tom Belford (Lower Tukituki representative)

Members of the Ruataniwha Water Storage Stakeholders Group

ATTACHMENT 2

HBRC Staff submission to 2012-22 LTP on 11 June 2012

15.1.

The budget estimates for this project have been based on the figures available in February 2012 for the Ruataniwha water harvesting project which at that time had a figure of \$170m as the capital cost. This cost has been included in the draft LTP and calculations of the cost for Council to take up a 51% shareholding has been estimated at \$80m, this figure being included in the Plan.

15.2.

Since February, costs for the construction of the dam and infrastructure to deliver water to the farm gate have been revised at \$230m. This is the capital cost to be used in the financial feasibility currently being undertaken, this feasibility is on track to be submitted to Hawke's Bay Regional Investment Company and Council by the end of August 2012.

15.3.

It is proposed to correctly reflect the revised capital cost of this project in the final LTP and to amend the \$170m where mentioned in the Plan to \$230m. The potential for cost adjustments is clearly signalled in both the introduction and the right debate segments of the draft LTP. The cost adjustments reflect more accurate information, in particular the refinement of the off-farm infrastructure costs. Costs relate to additional storage capacity and the infrastructure required, hydro-generation capacity and the infrastructure required and additional costs associated with the engineering solutions to various geotechnical aspects relating to the storage site specifically.

15.4.

The inclusion of information covering the extent of Council's proposed commitment to this project, namely \$80m, was specifically discussed with Audit New Zealand who advised that the inclusion of this information in the draft LTP was essential. It is proposed that Council retains the commitment of \$80m towards a potential equity investment in this project. This may result in Hawke's Bay Regional Investment Company having a less than 51% share of equity in the scheme. However capital structuring and assessment of other investors in the potential scheme will be a subject of major focus going forward and will no doubt influence arrangements.

15.5.

Staff have discussed with Audit New Zealand, the impact on the LTP process if the commitment to Council either decreased or increased from the \$80m included in the draft LTP. In their opinion LTP process issues will only occur if Council is required to commit significantly more than the \$80m (a figure of over 10% additional funding was mentioned). In their opinion this would trigger an amendment to the LTP and this amendment would need to be consulted on again.

Effect on Plan

15.6.

There is no financial effect on the Plan as Council's input into the Ruataniwha water harvesting project is proposed to be retained at \$80m, however the narratives in the Plan will be updated to reflect the current costs of \$230m for this project.

Recommendation

15.7.

That where the draft LTP includes the cost of the Ruataniwha water harvesting project at \$170m that this be revised to \$230m and, further, that Council's financial commitment to the purchase of equity in this project be retained in the final Plan at \$80m.