

**Before the Independent Hearings Panel
Porirua City Council**

In the matter of Variation 1 to the Proposed District Plan

**Memorandum of Counsel on behalf of Wellington Regional Council -
Submitter 74 – response to questions arising regarding submission
point OS74.52**

Date: 23 March 2023



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MAY IT PLEASE THE PANEL

1 The purpose of this memorandum of counsel is to provide a response to the Panel's questions during the hearing on 21 March 2023 as to Wellington Regional Council's (**GWRC's**) submission point OS74.52.

2 That submission point as summarised in the Summary of Submissions document is:

Ensure the Deed of Settlement areas are not subject to the District Plan, as this will most effectively provide for the exercise of tino rangatiratanga by Ngāti Toa Rangatira.

3 Turning to the original submission itself, the decision requested/relief sought on that issue is broader, it seeks:

Retain the Papakainga Chapter.

Ensure the Deed of Settlement areas are not subject to the District Plan, as this will most effectively provide for the exercise of tino rangatiratanga by Ngāti Toa Rangatira.

PCC works in partnership with Ngāti Toa Rangatira to ensure consistency with Proposed RPS Change 1 across the full extent of the District Plan.

4 These have been coded to separate submission points (being OS74.51, 52 and 53) but together they provide the relief sought.

5 The genesis of this was to respond to a concern raised by Ngāti Toa with how the Proposed District Plan (**PDP**) restricts the ability to use and develop their own land and Ngāti Toa's desire to better provide for the exercise of Tino Rangatiratanga by Te Runanga o Toa Rangaitira.¹

¹ Refer, Te Rūnanga o Toa Rangatira submission point 114.5.

6 The Panel has sought a response from GWRC as to the following questions:

6.1 Is GWRC still pursuing submission point OS74.52, and

6.2 If so, what is the legal basis for such relief?

7 GWRC advises the Panel that it is still pursuing the submission point. Included as **Appendix 1** to this memorandum, is a table that assesses the options the Council considers could be utilised by the Panel to provide for the relief sought through recommendations on the Variation. The preferred option proposed by GWRC is the inclusion of a policy framework, and supporting controlled activity status for the relevant activities, that:

7.1 provides for commercial activities and industrial activities in the Deed of Settlement Areas that are within the Medium Density Residential Zone by Te Runanga o Toa Rangatira or Te Āhuru Mōwai; and

7.2 directs resource consent applicants to undertake consultation with Te Runanga o Toa Rangatira for use or development of sites adjacent to Deed of Settlement areas.

8 In relation to scope:

8.1 In respect of the *Motor Machinists* two limb test, the relief sought is within the ambit of Variation 1 because it is directly related to what a well-functioning urban environment is, which is one of the MDRS requirements,

and is an issue clearly addressed in the section 32 analysis for the Variation.²

8.2 While the relief set out in this memorandum and Appendix is more directive as to how the relief sought could be achieved through the planning framework to that which is specified within the submission, it is considered to fall within the ambit of that submission in that it falls between the status quo (being the application of the MDRS to areas of the Deed of Settlement Areas within the Medium Density Residential Zone) and the wording of the submission that sought the removal of those controls. Regardless, as set out in GWRC's legal submissions of 9 March 2023, clause 99 of Schedule 1 of the Resource Management Act 1991 (**RMA**) provides a pathway for the Panel to recommend this relief even if it were considered to be outside the scope of the GWRC submission.³

9 Finally, in respect of the limits imposed on what the Panel can recommend in response to submissions on the basis that the Variation is an intensification planning instrument, the relief is valid. The relief sought:

9.1 is not seeking to be less enabling of development in a relevant residential zone,

9.2 is more enabling of development in the Deed of Settlement Areas than would otherwise apply (which, section 77H of the RMA provides for), and

9.3 the amendments proposed are supportive of the incorporation of the MDRS and giving effect to the

² *Palmerston North City Council v Motor Machinists Limited* [2013] NZHC1290 at [80]-[82], refer to paragraphs [18] to [22] of GWRC's legal submissions, dated 9 March 2023.

³ Refer paragraph [12] of GWRC's legal submissions, dated 9 March 2023.

relevant policies of the National Policy Statement on Urban Development as required by section 80E(1)(b)(iii) of the RMA.

- 10 The Appendix includes a section 32 analysis, prepared by Mr Richard Sheild from Wellington Regional Council.

Date: 23 March 2023



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Emma Manohar
Counsel for Wellington Regional
Council

APPENDIX 1 – Relief sought by GWRC in respect of Submission point OS74.52

Option	Description	Benefits	Costs	Drafting
<p>Option 1: Consultation with Ngāti Toa on intensification adjacent to Deed of Settlement areas</p>	<p>This option would involve the insertion of policy direction requiring consultation with Te Runanga o Toa Rangatira on intensification of housing on properties adjacent to the Deed of Settlement Areas.</p> <p>The rationale is that this would help empower Te Runanga o Toa Rangatira to keep land uses/intensities of development that they consider to be inappropriate away from Deed of Settlement land.</p>	<p>Economic: N/A</p> <p>Social: N/A</p> <p>Cultural: Low cultural benefits associated with reduced ability for incompatible activities to be located adjacent to Deed of Settlement areas.</p> <p>Environmental: Low environmental benefits associated with less intensive development and consequent lower pressure on receiving environments, e.g., freshwater.</p>	<p>Economic: Low economic cost associated with potential for greater restriction on use and development in properties adjacent to Deed of Settlement areas.</p> <p>Social: Low social cost associated with reduced ability for developers to construct higher-density more affordable housing in Porirua.</p> <p>Cultural: Moderate cultural cost associated with Ngāti Toa still being constrained in their ability to exercise tino rangatiratanga over the Deed of Settlement Areas.</p> <p>Environmental: N/A</p>	<p>Insert new policy as follows: <u>MRZ-PX Consultation with Te Runanga o Toa Rangatira</u> <u>Require consultation with Te Runanga o Toa Rangatira for use or development of sites adjacent to Deed of Settlement areas where the use or development is for a controlled, restricted discretionary, discretionary, or non-complying activity.</u></p>
<p>Option 2: Easier pathway to consent for development of Ngāti Toa Deed of Settlement areas</p>	<p>This option would focus on inserting provisions that provide an easier pathway for development of Deed of Settlement Areas. There are two aspects to this.</p> <p>The first is to focus on less stringent consenting requirements for Te Runanga o Toa Rangatira when developing Deed of Settlement Areas, for example by setting most activities as controlled activities so resource consent is required but must be granted.</p> <p>The second is to ensure there is a relatively straightforward planning pathway for “out of zone” uses, such as commercial uses in residential zones.</p>	<p>Economic: Low economic benefit associated with easier path to consent for development of Deed of Settlement areas.</p> <p>Social: Moderate social benefit associated with easier development of Deed of Settlement areas, especially for affordable housing.</p> <p>Cultural: Moderate cultural benefit associated with greater ability to exercise tino rangatiratanga over Deed of Settlement Areas.</p> <p>Environmental: Low environmental benefits associated with best practice development by Te Runanga o Toa Rangatira on Deed of Settlement areas.</p>	<p>Economic: N/A</p> <p>Social: Low social impacts associated with potentially inappropriate development for the zones on Deed of Settlement areas.</p> <p>Cultural: N/A</p> <p>Environmental: N/A</p>	<p>Insert a new policy as follows: <u>MRZ-PY Providing for use and development of Deed of Settlement areas</u> <u>Recognise and provide for the benefits to Te Runanga o Toa Rangatira derived from use and development of Deed of Settlement Areas by:</u></p> <ol style="list-style-type: none"> <u>1. Providing for commercial activities and industrial activities in the Deed of Settlement Areas that are within the Medium Density Residential Zone; and</u> <u>2. Providing for the granting of resource consents applied for by Te Runanga o Toa Rangatira or Te Āhuru Mōwai for the use or development of Deed of Settlement Areas within the Medium Density Residential Zone.</u>
<p>Option 3: Initiate development of a “rangatiratanga” layer or zone</p>	<p>Develop a “rangatiratanga” zone or layer that encompasses the Deed of Settlement Areas and perhaps SASMs. Once developed this zone or layer would have its own set of provisions that provide an easier pathway to consent for activities by Te Runanga o Toa Rangatira in the zone/layer.</p>	<p>Economic: Low economic benefit associated with easier path to consent for development of Deed of Settlement areas.</p> <p>Social: Moderate social benefit associated with easier development of Deed of Settlement areas, especially for affordable housing.</p> <p>Cultural: Moderate cultural benefit associated with greater ability to exercise tino rangatiratanga over Deed of Settlement Areas.</p> <p>Environmental: Low environmental benefits associated with best practice development by Te Runanga o Toa Rangatira on Deed of Settlement areas.</p>	<p>Economic: N/A</p> <p>Social: Low social impacts associated with potentially inappropriate development for the zones on Deed of Settlement areas.</p> <p>Cultural: N/A</p> <p>Environmental: N/A</p>	<p>Insert a new method as follows: <u>MRZ-MX Develop and implement a rangatiratanga layer or zone</u> <u>Porirua City Council will initiate the development of a bespoke layer or zone with Te Runanga o Toa Rangatira. This layer or zone should apply to Deed of Settlement Areas and Sites of Significance to Māori within or adjacent to the Medium Density Residential Zone. The layer or zone should provide less stringent activity statuses or activities in comparison to the Medium Density Residential Zone.</u></p>

APPENDIX 1 – Relief sought by GWRC in respect of Submission point OS74.52

Option	Description	Benefits	Costs	Drafting
<p>Option 4: Initiate Section 33 transfer of powers for Ngāti Toa Deed of Settlement areas</p>	<p>Insert a method that commits PCC to beginning work on a Section 33 transfer of powers under the RMA that would transfer consenting powers to Te Runanga o Toa Rangatira for the Deed of Settlement Areas. Te Runanga o Toa Rangatira would then grant or decline consent for its own activities in the Deed of Settlement Areas.</p>	<p>Economic: Low economic benefit associated with easier path to consent for development of Deed of Settlement areas but delayed while the transfer of powers is implemented.</p> <p>Social: Moderate social benefit associated with easier development of Deed of Settlement areas, especially for affordable housing, but delayed while the transfer of powers is implemented.</p> <p>Cultural: Moderate cultural benefit associated with greater ability to exercise tino rangatiratanga over Deed of Settlement Areas but delayed while the transfer of powers is implemented.</p> <p>Environmental: Low environmental benefits associated with best practice development by Te Runanga o Toa Rangatira on Deed of Settlement areas but delayed while the transfer of powers is implemented.</p>	<p>Economic: N/A</p> <p>Social: Low social impacts associated with potentially inappropriate development for the zones on Deed of Settlement areas but delayed while the transfer of powers is implemented.</p> <p>Cultural: N/A</p> <p>Environmental: N/A</p>	<p>Insert a new method as follows: <u>MRZ-MY Investigate a Section 33 transfer of powers to Te Runanga o Toa Rangatira within Deed of Settlement areas</u> <u>Porirua City Council will work with Te Runanga o Toa Rangatira to investigate the feasibility of a transfer of powers under Section 33 of the Resource Management Act 1991 for the Deed of Settlement Areas within the Medium Density Residential Zone.</u></p>
<p>PREFERRED OPTION Option 5: Combination of Options 1 and 2</p>	<p>This option would combine options 1 and 2, including both an easier pathway to consent for development of Deed of Settlement Areas as well as a requirement to consult with Ngāti Toa on development or intensification on properties adjacent to Deed of Settlement sites.</p>	<p>Economic: Low economic benefit associated with easier path to consent for development of Deed of Settlement areas.</p> <p>Social: Moderate social benefit associated with easier development of Deed of Settlement areas, especially for affordable housing.</p> <p>Cultural: Moderate cultural benefit associated with greater ability to exercise tino rangatiratanga over Deed of Settlement Areas and reduced ability for incompatible activities to be located adjacent to Deed of Settlement areas.</p> <p>Environmental: Low environmental benefits associated with best practice development by Te Runanga o Toa Rangatira on Deed of Settlement areas.</p>	<p>Economic: Low economic cost associated with potential for greater restriction on use and development in properties adjacent to Deed of Settlement areas.</p> <p>Social: Low social impacts associated with potentially inappropriate development for the zones on Deed of Settlement areas.</p> <p>Cultural: N/A</p> <p>Environmental: N/A</p>	<p>Insert new policies as follows: <u>MRZ-PX Consultation with Te Runanga o Toa Rangatira</u> <u>Require consultation with Te Runanga o Toa Rangatira for use or development of sites adjacent to Deed of Settlement areas where the use or development is for a controlled, restricted discretionary, discretionary, or non-complying activity.</u> <u>MRZ-PY Providing for use and development of Deed of Settlement areas</u> <u>Recognise and provide for the benefits to Te Runanga o Toa Rangatira derived from use and development of Deed of Settlement Areas by:</u></p> <ol style="list-style-type: none"> <u>1. Providing for commercial activities and industrial activities in the Deed of Settlement Areas that are within the Medium Density Residential Zone; and</u> <u>2. Providing for the granting of resource consents applied for by Te Runanga o Toa Rangatira or Te Āhuru Mōwai for the use or development of Deed of Settlement Areas within the Medium Density Residential Zone.</u>