

**Regulatory Impact Statement
Hawke's Bay Regional Council Joint Planning Committee
Agency Disclosure Statement**

This Regulatory Impact Statement has been prepared by the Office of Treaty Settlements.

It provides an analysis of options to establish a Hawke's Bay Regional Council (HBRC) joint planning committee (JPC) by legislation, as agreed by Cabinet [CAB Min (10) 23/3 refers], and for iwi/hapu governance entities to be listed as 'appointers' to the JPC by Order in Council.

The Office of Treaty Settlements, the Ministry for the Environment and Department of Internal Affairs undertook policy work from 2009 to 2011 to develop guidelines for natural resource co-governance mechanisms between local authorities and iwi. The proposal for establishment of a JPC by legislation has been assessed against Cabinet's:

- natural resource management guidelines [CAB Min (10) 25/3 Rev 1 refers]; and
- guidelines for determining Crown contributions to new local government arrangements to better involve iwi in natural resource management, where the arrangements are developed as part of an historical Treaty settlement or in parallel to one [CAB Min (11) 29/9) refers].

Other options did not provide for the JPC to persist beyond triennial local government elections. It would not provide for a robust and durable relationship between the local authority and iwi/hapu governance entities if each successive Council would need to decide whether to have a joint committee.

The proposals, by improving iwi/hapu participation in governance on natural resources, are expected to have no direct cost on businesses but over time reduce costs in resource management processes for local authorities, businesses and the public. There is no impact on private property rights, market competition, or the incentives on businesses to innovate and invest. There is no impact on fundamental common law principles.

The proposals have been assessed against the Government Statement on Regulation and the Office of Treaty Settlements is satisfied that the proposal, for iwi/hapu governance entities to be listed as 'appointers' to the JPC by Order in Council, is required, reasonable and robust.



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Status quo and problem definition

The Resource Management Act 1991 (RMA) provided, among other things, for the transfer of powers and functions to iwi authorities; early consultation with tangata whenua on proposed planning documents; and consideration of planning documents recognised by an iwi authority during preparation of local authority planning documents. In 2003 and 2005 further amendments to the RMA sought to further enable iwi involvement. However by June 2010 there had been no transfers of powers to iwi authorities and councils varied widely in how or whether they took iwi planning documents into account.

The Local Government Act 2002 (LGA) allows the appointment of non-councillor members to council committees. However, these arrangements are subject to the termination of council committees at triennial elections. As well, appointments to such committees are by the local authority. The combination of these factors does not provide a satisfactory basis for a robust and durable relationship between local and iwi authorities/governance entities.

The government seeks to better involve iwi in natural resource management, where the arrangements are developed as part of an historical Treaty settlement or in parallel to one. In July 2010 Cabinet agreed "that to avoid prejudicing local government roles and responsibilities for natural resources management under the RMA and the LGA, and the outcomes of wider natural resource management policy processes, more active use be made in historical Treaty of Waitangi negotiations of mechanisms for involving iwi in natural resource management already available under existing legislation (in particular the RMA and the LGA.)"

Objectives

The government seeks to better involve iwi in natural resource management, where the arrangements are developed as part of an historical Treaty settlement or in parallel to one.

The proposed legislation will provide for a joint committee to be established, between the Hawke's Bay Regional Council and iwi/hapu with interests in the region's natural resources, that it be deemed a joint committee; and that iwi/hapu governance entities may be added to the list of 'appointers' to the JPC by Order in Council.

The JPC will be reviewed as required by HBRC and may be extinguished by agreement of the HBRC and the iwi/hapu governance entities listed as 'appointers.'

The Deed of Settlement of Historical Claims of Ngāti Pāhauwera requires the Crown to introduce legislation to establish the JPC by 30 June 2013.

Regulatory impact analysis

Before endorsing the JPC as a preferred natural resources mechanism in Hawke's Bay, Ministers and agencies considered a number of statutory and non-statutory arrangements. These would have resulted in multiple statutory boards across the region, duplication of effort, complexity for council and the public and increased costs. Non-statutory options do not provide iwi/hapu governance entities: a role acceptable to iwi and consistent with the Resource Management Act 1991 and Local Government Act 2002; permanence; or authority to appoint their own representatives.

Several options were considered for how to authorise individual iwi/hapu governance entities to be appointers to the JPC. There was no significant variation in impacts between the options.

Option one, authorisation by Order in Council, is the preferred option. This was considered to provide the best balance of oversight, efficiency and flexibility.

Option two, authorisation of governance entities by primary legislation, was considered expensive and inflexible. Several claimant groups have yet to form governance entities so the Crown cannot specify these as yet in legislation, necessitating a number of new bills in the future. As well it denied the opportunity for governance entities to join the JPC soon after signing a Deed of Settlement with the Crown.

Options three was authorisation by a lesser level of delegated regulation than Order in Council. As authorisation to appoint to the JPC has potential impacts on the local authority's governance it was considered that, on balance, a higher level of regulation was desirable.

There was no variation in cost to local government, businesses or the public in comparison of a JPC established by legislation or a committee of HBRC with iwi/hapu representatives, appointed by HBRC under the Local Government Act 2002 (LGA).

Consultation

Officials meet with all iwi/hapu claimant groups with interests in the Hawke's Bay region's natural resources in 2010 to discuss the JPC proposals. There has been extensive consultation between Crown and HBRC's officials, who also worked with Ngāti Pāhauwera, Ngāti Hineuru Iwi Inc., Mana Ahuriri Inc., and Maungaharuru Tangitu Inc., to develop terms of reference for the JPC.

The Deed of Settlement of Historical Claims of Ngāti Pāhauwera commits the Crown to establish the JPC by legislation. No submissions were received by the Māori Affairs Select Committee, in its consideration of this Bill, opposing the JPC.

The Office of Treaty Settlements has consulted the following departments: the Treasury, the Department of Conservation, Department of Internal Affairs, the Ministry for the Environment, Land Information NZ and Te Puni Kōkiri and the Crown Law Office. The HBRC has been central to planning for the proposed joint planning committee.

Conclusions and Recommendations

The establishment of a JPC by legislation and authorisation of iwi/hapu governance entities to appoint members to the JPC by Order in Council is consistent with Cabinet guidelines, is an efficient and effective option, and it has minimal impact on the statutory framework. Establishment of the JPC fulfils the commitments in the Deed of Settlement Deed of Settlement of Historical Claims of Ngāti Pāhauwera and the Agreement in Principle to Settle Historical Claims between the Crown and Maungaharuru-Tangitu hapu.

Implementation

The HBRC intends to form a transitional JPC in late 2011, as a committee of the Council under the LGA, pending legislation to establish the JPC as a permanent joint committee of Council.

The JPC proposals have minimum impact on existing legislation and facilitate objectives and provisions in the RMA and LGA.

No enforcement strategy is required.

Monitoring, evaluation and review

The JPC will be a joint committee of the HBRC and as such responsible to HBRC. The JPC's functioning will be reviewed as required by the HBRC.