



## Submission Form

Send your submission to reach us by  
**4 pm on Tuesday 6 September 2022**

Submission Number

Office use only

**14**

<b>Post:</b> The Chief Executive Bay of Plenty Regional Council PO Box 364 Whakatāne 3158	<b>or Fax:</b> 0800 884 882	<b>or email:</b> rpschange6@boprc.govt.nz
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**Submitter:** Des Heke – Ngāti He hapu

This is a submission on **Proposed Change 6 (NPS-UD) to the Bay of Plenty Regional Policy Statement**

- 1 I **could not** gain an advantage in trade competition through this submission.
- 2 The details of my submission are in the attached table.
- 3 I **wish** to be heard in support of my submission.
- 4 If other hapū mo Te Arawa ki te Ihu o Te Waka make a similar submission, I will consider presenting a joint case with them at a hearing.

\_\_\_\_\_  
[Signature of person making submission or person authorised to sign on behalf of person making submission.]  
[NOTE: A signature is **not** required if you make your submission by electronic means.]

\_\_\_\_\_  
Date 6.9.22

**Contact person:** [Name and Designation if applicable]

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**The specific provisions of the proposal that my submission relates to are set out in the following table.**

<b>Reference (to page number, section, heading)</b>	<b>Position (Support or Seek amendment)  Issue/Comment &amp; rationale</b>	<b>Recommendation/Relief sought</b>
Whole change	<p>Tangata whenua capability and capacity is severely lacking and a major impediment to actively engage in the myriad of Regional, City and District Plan change processes being hammered through to comply with central government requirements. Proposed Change 6 (NPS-UD) is just one example. Tangata whenua need specific technical and independent advice and appropriate resourcing to enable us to produce timely, effective, relevant and appropriate input to these processes.</p> <p>It is not fair to say tangata whenua consultation has been properly implemented in any real sense when tangata whenua don't fully understand the totality of the changes proposed and their true implications for iwi Māori.</p> <p>This situation will only worsen with all the resource management reform pending under the Natural and Built Environments Act (NBEA), Spatial Planning Act (SPA) and the Climate Adaptation Act (CAA).</p> <p>Compliance with the NPSUD requirements means decision making is effectively over and concluded. Implementation is purely a management administrative matter. Governance becomes almost an irrelevancy.</p> <p>Cultural offsetting must be placed into statutory context for without that context it is mere words.</p> <p>Where intensive development results in sacred sites having been destroyed or modified then the plan must be amended to include appropriate compensation or alternative compensatory options.</p> <p>These concerns require specific mention in Proposed Change 6 - not a mere mention in a side note.</p>	Strengthening Maori involvement in decision making requiring that all applications be subject to Tangata Whenua Manawhenua assessment for effects and options
Whole change	Proposed Change 6 (NPS-UD) introduces changes to the Bay of Plenty Regional Policy Statement (RPS) to implement the National Policy Statement on Urban Development 2020 (NPS UD). It proposes:	We support the key points of the Ngā Aho and Papa Pounamu 'Wānanga Report' and the intent of NPS-UD Policies 1 and 9 and seek to ensure Proposed Change 6 (NPS-UD) enables urban planning decisions that address tangata whenua values and aspirations for urban development.

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	<ul style="list-style-type: none"> <li>• broadening 'Providing for Papakāinga' Policy UG 22B to a 'Te Tiriti o Waitangi principles' policy that seeks to enable the development of Māori land, protect culturally significant view shafts from marae, and protect marae from incompatible uses and development</li> <li>• removing the urban limits and growth area timing and sequencing policies and Appendices C, D and E for the western Bay of Plenty sub-region</li> <li>• inserting new policies with criteria for considering unanticipated or out-of-sequence urban business and residential plan change proposals; and</li> <li>• inserting a new policy enabling higher density urban development.</li> </ul> <p>In 2015 the NZ Productivity Commission undertook a review of the urban planning system to identify, from first principles, the most appropriate system for allocating land use to support desirable social, economic, environmental and cultural outcomes. In December 2015 the Productivity Commission released a 'Better Urban Planning' Issues Paper to assist people to participate in the inquiry. The Commission then contracted Ngā Aho to work with Papa Pounamu to inform their 'Better Urban Planning' Draft Report. A wānanga was held at with the Productivity Commission at Te Noho Kotahitanga on 17 June 2016, and a 'Wānanga Report' prepared subsequently by Ngā Aho and Papa Pounamu representatives in July 2016. The 'Wānanga Report' made the following points about urban planning:</p> <ul style="list-style-type: none"> <li>• 'Māori communities have strong and varied interests in better urban planning</li> <li>• A better urban planning system needs to recognise planning based on mātauranga Māori</li> <li>• Better urban planning must focus on holistic outcomes</li> <li>• The existing planning framework does not deliver outcomes for Māori communities</li> <li>• There is a lack of guidance and capacity</li> <li>• Kaitiakitanga is more than 'preservation; and</li> <li>• Rangatiratanga is more than 'consultation'</li> </ul>	

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	<p>In response the NPS-UD contains direction to require urban planning decision provide for tangata whenua values and aspiration. For example Policy 1(a)(ii) of the NPS-UD directs planning decisions contribute to well-functioning urban environments, which have or enable a variety of homes that enable Māori to express their cultural traditions and norms. Furthermore Policy 9 requires:</p> <p><i>Policy 9: Local authorities, in taking account of the principles of the Treaty of Waitangi (Te Tiriti o Waitangi) in relation to urban environments, must:</i></p> <ul style="list-style-type: none"> <li><i>(a) involve hapū and iwi in the preparation of RMA planning documents and any FDSs by undertaking effective consultation that is early, meaningful and, as far as practicable, in accordance with tikanga Māori; and</i></li> <li><i>(b) when preparing RMA planning documents and FDSs, take into account the values and aspirations of hapū and iwi for urban development; and</i></li> <li><i>(c) provide opportunities in appropriate circumstances for Māori involvement in decision-making on resource consents, designations, heritage orders, and water conservation orders, including in relation to sites of significance to Māori and issues of cultural significance; and</i></li> <li><i>(d) operate in a way that is consistent with iwi participation legislation</i></li> </ul> <p>Proposed Change 6 (NPSUD) must actively implement these requirements to address the urban planning issues identified in the Ngā Aho and Papa Pounamu 'Wānanga Report'.</p>	
<p>Policy UG 22B Te Tiriti o Waitangi Principles</p>	<p>Support amending Policy UG 22B from 'Providing for Papakāinga' to 'Te Titiri o Waitangi Principles'. Currently operative Policy UG 22B has a narrow focus only providing for Papakāinga including marae-based housing outside urban areas and the urban limits. The operative policy doesn't recognise nor provide for urban marae which have existed for many generations. It is more</p>	<p>Retain Policy UG 22B 'Te Tiriti o Waitangi Principles' subject to the changes requested below.</p>

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	<p>appropriate to enable Māori land development both inside and outside urban areas.</p> <p>Objective 5 and Policy 9 of the NPSUD seek to ensure planning decisions relating to urban environments take into account Te Tiriti o Waitangi principles. The new 'Te Tiriti o Waitangi Principles' policy has a broader focus on planning decisions and encapsulates both urban and rural marae and papakāing. It seeks to ensure planning decisions provide for Te Tiriti o Waitangi principles and expands on the existing Policy UG 22B by seeking to (e) <i>protect marae and Papakāinga from incompatible uses or development and reverse sensitivity effects...</i>and (a) <i>enabling Māori to develop their land, including but not limited to Papakāinga housing, marae and community facilities.</i> These provisions seek to provide for te Tiriti o Waitangi principle of active protection.</p> <p>New Policy UG 22B goes further by providing for (b) <i>tikanga Māori and opportunities for Māori involvement in Council's decision-making processes</i> and (c) <i>enabling early and ongoing engagement with iwi, hapū and affected Māori land trusts</i> and (f) <i>demonstrating how Māori values and aspirations identified during consultation in (c) have been recognised and provided for.</i></p> <p>It also seeks to (d) <i>identify and protect cultural significant areas and view shafts.</i></p> <p>By implementing the NPS-UD, RPS Change 6 is expected to contribute to social, cultural and economic benefits particularly in terms of meeting the government's urban housing objectives. The addition of a new Te Tiriti o Waitangi policy in relation to urban development is expected to clarify the obligations for developers and resource management planning decisions around Te Tiriti o Waitangi principles.</p>	
<p>Cultural off setting – explanation text for Policy UG 22B Te Tiriti o Waitangi Principles</p>	<p>Te Ihu o te Waka o te Arawa members are concerned about the concept of 'cultural offsetting'. The explanation text for Policy UG 22B includes the following paragraph <i>'One of the means of giving effect to these principles is through methods developed in conjunction with tangata whenua to offset the impacts of urban development on culturally significant values, sites or area.'</i></p>	<p>Develop a Cultural Heritage and Mahinga Kai site process to deal with the amount of net loss of sites. Similar to transfer development rights, develop methods to give effect to further maori occupation for new sites.</p>

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	<p>There is a reading on the subject on the net from Australian scholars <a href="https://eprints.utas.edu.au/29057/">https://eprints.utas.edu.au/29057/</a>. It does give caution to the use of offsets and the normalisation of a practice which is in relation to trading off heritage value. It is from learning with biodiversity that mitigation means hierarchy could let the standard and in essence the intent slide if the :</p> <ul style="list-style-type: none"> <li>-appropriate enforcement is not given, and</li> <li>-effective and sufficient amount of resource is given to identify and protect any potential or actual known sites</li> </ul> <p>The later gives rise to the need for the necessary reporting like cultural landscape assessments and technology available like GPR, ground penetrating radar to be more or less minimum go to in the tool box. Alongside this needs to sit the necessary enforcement to also deter those looking take advantage if the intent.</p> <p>I have welcomed to date from Te Arawa representatives who had considered and discussed these issues as they are real and have been well documented. As the threats to such mechanisms in planning and made known this caution. The RMA is a balancing Act and a lot of mitigation is made in side agreements when entering notified applications and have not really been afforded the opportunity for case law and arguments to be tested. This relates to the attrition experienced by tangata whenua in the appeal and hearings process and cannot take matters further. On the other hand with the political decision making we need our maori in positions of influence in the representatives role to both be informed if this issues and be around the decision making table.</p> <p>There is an example that is I have brought up during the May 2021 Combined Tangata Whenua Forum Hui. It was tabled and moved to investigate Cultural Heritage Offsets. It has since been changed to align with the sec 104 RMA review to include both Offsetting and Compensation. In my own experience as a</p>	

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	<p>cultural monitor since 1994 with both my Koroua Taane Wharemokai and Tame Rangiteaorere Heke Kaiawha around our rohe, and that is the amount of sites disturbed or lost. Some of these have been impacted without consent or even RMA or the then HPA processes in place. However over the last two decades of monitoring these in particular are evident in the heritage authority process where sites not known are discovered, recorded and destroyed. However it is anticipated in the Heritage Authority process that a consent is sought and it is at this stage that if an authority is issued then the net loss be recorded is a measure used to offset. The case for the cultural sites would have an opportunity for the record of any unknown loss and a case for more cultural site protection planning.</p> <p>Villages and Pa that names tuku iho have been lost to inappropriate subdivision and use of land and waterway resources. The wetlands or remnant features of mahinga kai sites mis interpreted or not acknowledged in many biodiversity assessments. The same can be said for archaeological assessments. Weight given or even the inclusion of cultural assessment have mainly been used as mitigation.</p> <p>I actually thought the district and city councils would be paying more attention or investing more into cultural heritage. Though i see city and regional planning just rolling ahead and hence seem this coming to raise this through this regional plan review. The first LTTCP and Tauranga City Council and WBOPDC Plan review seen many sites omitted by with the promulgated DRAFT Plan being challenged and the majority of Significant Sites removed. Education to land owners is still an issue and these Sites were and still are seen as an encumbrance. For one Council the sites were too numerous to be included in the Plan Change and were rescheduled to be placed in other Plan changes of strategies. The BOPRC Cultural Heritage Assessment Criteria are there and do provide some information for the sites to be included, however without further research into the sites identified offered or even access then these sites get omitted</p>	

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	<p>and cannot be preserved or protected. It is then common practice to then apply for a Heritage Authority to Modify or Destroy sites and record any finds. This approach of the default Heritage Authority process actually records all the net discoveries giving a fair and reasonable description and value. These recordings are the net loss of archaeological sites that comprise of cultural heritage sites and landscapes. The same can be said for the wetland disturbance consents that are issued. The offsetting that is occurring has no to minimal standard for mahinga kai. The standards are usually aesthetic and provide other function such as stormwater control and amenity value to developments.</p> <p>I Have recorded the loss of many sites of through data collection and mapped these sites loss. I've also used the sites loss to analyse and predict on cultural landscapes what sites will most likely be discovered if disturbed. Coupled with these I have been with kaumatua and matakite who have also provided information valuable to the significance of sites and areas.</p> <p>This offsetting can occur in other scenarios like alluded to earlier with the loss of mahinga kai areas ie wetlands, so cultural heritage too can have wider definitions as a narrative of that relationship to natural resource(s) are identified.</p> <p>Cultural offsetting or compensation can be used to address the Treaty of Waitangi Principles and Maori Land Development initiatives especially housing by offering the net loss of cultural significance to be transferred into development rights for Maori. In fact in a fair offset scenario mahinga kai activity such as mahi tuna in a wetland disturbance must create that same scenario at least. With the ancestral occupation being destroyed, the occupation needs to be offset also. If in any of the case where it cannot be offset then it needs to be compensated. In Kaitemako, 3 Large Maori Land Blocks within the former Urban Limits have had their structure planning funding pulled by TCC. The area is</p>	



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	<p>in the anticipated growth area. On the other side of the Kaitemako on general land.</p> <p>Fast Track legislation and the RMA and HPA has been used to remove a significant sites, destroy remnant village and all the associated archaeological sites. TCC have now opened up load with even more visible cultural significant features for a Private Plan Change. This site spans two catchment being the Kaitemako (into the Rangataua) and Pukemapu (into the Waimapu). These yield serving planning processes need to stop.</p> <p>Any sites destroyed or modified need to be attributed as a net loss. These sites need to be offset or compensated to the tangata whenua concerned.</p>	