

Decision Report

**on the Hawke's Bay Regional Pest Management Plan
Under the Biosecurity Act 1993**

Appendix 3 – Minutes of the Hearing Panel

Hearing Panel:

**John Simmons (Chair)
Councillor Tom Belford
Councillor Paul Bailey
RPC member Apiata Tapine**

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Hawke's Bay Regional Council
Proposal for Hawke's Bay Regional Pest Management
Plan

pursuant to the Biosecurity Act 1993

MINUTE AND DIRECTIONS OF HEARING PANEL
on preparation for hearing of submissions

[Minute 1]

INTRODUCTION

1. At its meeting on 24 April 2018 the Hawke's Bay Regional Council (**Council**) under clause 32 of Schedule 7 of the Local Government Act 2002 appointed us as the Hearing Panel on the Proposed Hawke's Bay Regional Pest Management Plan (**the Proposal**).
2. The Council delegated to us the powers, functions and duties of the Council set out in:
 - a. Sections 71 to 74 (excluding section 72(5)) and sections 100D(6)(b) of the Biosecurity Act 1993 (**BSA**), in respect of the Proposal; and
 - b. Sections 75(1) and (2) of the BSA to prepare a written report on the Plan.
3. These include the powers, functions and duties of hearing submissions on the Proposed Hawke's Bay Regional Pest Management Plan and of making recommendations to the Council on the Hawke's Bay Regional Pest Management Plan.
4. The members of the Hearing Panel are:
 - a. Mr John Simmons (Chair)
 - b. Mr Apiata Tapine
 - c. Councillor Paul Bailey
 - d. Councillor Tom Belford

Section 70 & 71 OF THE BIOSECURITY ACT 1993

5. Section 70 of the Act outlines the matters that must be set out in the Proposal. As part of the process for making a regional pest management plan, section 71 requires us to be satisfied that the Proposal contains the matters set out in section 70 and meets the requirements of section 71 of the Act. We are required to complete this step before moving on to consider the draft Plan following the hearing of submissions.
6. Council Staff have provided us with an assessment of the Proposed Hawke's Bay Regional Pest Management Plan against the requirements of sections 70 and 71 of

the Act. We understand that this document has been made available on the Council's website. We have considered this assessment and are satisfied that the Proposal that was publicly notified for submissions complies with sections 70 and 71 of the Act.

7. Following the hearing of submissions and Panel deliberations, the Panel will direct staff to prepare a draft Plan in accordance with section 73 of the Act and incorporating any amendments the Panel directs to be made to respond to matters raised in submissions. On receipt of the draft Plan the Panel will then be required to satisfy itself that the draft Plan meets the requirements of sections 73 and 74 of the Act, before making its recommendations on the Plan.

NOTICE OF HEARING

8. Notice is given that a hearing by the Council has been set to consider the Proposed Hawke's Bay Regional Pest Management Plan and submissions received.
9. The dates and venues for the hearing of submissions are set out below. Sitting times for the hearing are 9:30am – 4:30pm.

WEEK 1

Date: 5 July 2018
Location: Napier
Venue: Hawke's Bay Regional Council, 159 Dalton Street, Napier

Date: 6 July 2018
Location: Napier
Venue: Hawke's Bay Regional Council, 159 Dalton Street, Napier

WEEK 2

Date: 9 July 2018
Location: Napier
Venue: Hawke's Bay Regional Council, 159 Dalton Street, Napier

Date: 10 July 2018
Location: Napier
Venue: Hawke's Bay Regional Council, 159 Dalton Street, Napier

DECISION ON ACCEPTANCE OF LATE SUBMISSIONS

7. The following six submissions were received on the Proposal by the Council after the date for making submissions closed on 16 March 2018 (together, the **Late Submissions**):
8.
 - a. East Coast HB Conservation Board – 18 March 2018
 - b. Peter Manson – 21 March 2018
 - c. Mike Healy – 23 March 2018

- d. Maungaharuru-Tangitū Trust – 28 March 2018
 - e. Paddy Maloney – 10 April 2018
 - f. HBRC (yellow bristle grass) – 17 April 2018
9. The submissions lodged have not yet been made available on the website for viewing. Further, no Notice of Hearing had been issued and directions for the filing of evidence had not yet been made.
 10. We are also required to be satisfied under section 72(1)(d) of the BSA that, if consultation with other persons is appropriate, sufficient consultation has occurred.
 11. We consider that the acceptance of the remaining late submissions will assist in meeting this requirement of the BSA and that no persons will be prejudiced by the late filing of these submissions.
 12. Accordingly, the Panel accepts the Late Submissions as valid submissions on the Proposal. This means that these submissions will be included in the summary of submissions in accordance with the Panel's directions set out below.

DIRECTIONS

13. This Minute sets out the Panel's directions for the conduct of the public hearing.

Staff Report

14. Council Staff are directed to prepare a Staff Report containing:
 - a. A summary of the key themes raised in submissions.
 - b. A summary of the submissions received on the Proposal highlighting key issues raised in submissions, including staff recommendations in response to each submission.
 - c. An assessment against the consultation requirements in section 72 of the BSA.
15. The Staff Report will be made available on the website on and from 21 June 2018.

Website

16. All information relevant to the hearings will be made available on the Council's website: <https://www.hbrc.govt.nz/services/pest-control/biosecurity/pest-management-plan-review/>
17. Submitters who wish to be heard are advised to view that information on the website.

Service on the Council

18. Any information or evidence required by this Minute, and any memorandum or application to the Hearing Panel, may be lodged:
 - a. In writing, addressed to Hawkes Bay Regional Council, Private Bag 6006, Napier 4142, marked for the attention of Mark Mitchell
 - b. By delivery to Hawke's Bay Regional Council, 159 Dalton Street, Napier.

- c. By email to pestplan@hbrc.govt.nz.

Confirmation of wish to be heard

19. Submitters who wish to be heard at the public hearing must confirm their intention and availability no later than 8 June 2018, and advise:
 - a. What date they would prefer;
 - b. Whether they require more than 15 minutes to speak to their submission and/or call evidence, and if so, an estimate of time and reasons for the additional time requested;
 - c. Whether they have any special needs (e.g. projector and screen);
 - d. Whether they intend to call expert evidence.

A Hearing Plan

20. A Hearing Plan will be e-mailed to submitters and posted to the website showing the location, date, sequence and time allocation granted to each submitter.
21. Submitters will be allocated 15 minutes to speak to their submission and/or call evidence. If submitters require more time, they are required to advise the Hearing Officer when they confirm their wish to be heard and give reasons for the additional time required (in accordance with paragraph 19 of this Minute).
22. Any additional time allocations will be set in light of the content of each submitter's submission, evidence (if any) and the time estimate and reasons provided by the submitter.

Provision of written evidence

23. To allow for the Hearing Panel to read the evidence prior to the hearing, submitters who intend to call or give evidence are to provide a written statement of the evidence of each witness so that it is received by the Council by 21 June 2018. Please note that this applies to all written evidence, including both expert and lay evidence. Due to the limited timeframes extensions to this date will not be granted.
24. It is noted that if lay persons wish to present evidence but do not wish to prepare a written statement of evidence, they may attend the hearing and make an oral presentation within the time allocation specified.
25. This timetable is established because the Hearing Panel considers that the scale and significance of the public hearing makes this direction appropriate. The statements of evidence will be posted on the website.

The Hearing Procedure

26. The Hearing Panel will read submissions and evidence in advance, and take such materials as read, so time allocations can be set to allow submitters to provide an executive summary of their submission and/or provide evidence in response to new issues and/or provide rebuttal evidence.

27. Submitters will not be permitted to cross-examine witnesses. The Hearing Panel may question submitters and witnesses.

Evidence Recording

28. An audio record of the hearing will be maintained and made available to submitters on the website.
29. Excerpts from the audio record may be transcribed, if appropriate, where the Panel requires it or receives an application and makes a direction for transcription.

Acknowledgement of Potential Conflict of Interest

30. Having reviewed a list of submitters, the Hearing Panel have identified those submitters with whom the Hearing Panel have had current or previous associations.

Apiata Tapine:

- Attended Tangata_Mana Whenua hui on the Proposed Regional Pest Management Plan in a listening capacity only. His and his entities name are not listed on the submission.

John Simmons:

- Previous association with KiwiRail Holdings Limited;
- Previous association with Land Information New Zealand;
- Previous association with Ministry for Primary Industries;
- Previous association with Department of Conservation.

31. The Hearing Panel is satisfied, subject to any matters submitters might raise, that any perceived conflicts of interest can be dealt with by this disclosure, and there is no need for any Panel member to recuse themselves from considering and determining any of the submissions.
32. If any submitter takes a different view, or wishes to raise additional matters, they are to alert the Council as a matter of urgency.

ISSUED by the Hearing Panel

18 May 2018

Hawke's Bay Regional Council
Proposal for Hawke's Bay Regional Pest Management Plan
pursuant to the Biosecurity Act 1993

MINUTE AND DIRECTIONS OF HEARING PANEL
on key matters arising from submissions and additional hearing date

[Minute 2]

INTRODUCTION

1. This is the second Minute of the Hearing Panel.
2. The Panel would like to thank staff for the officer's report on the Regional Pest Management Plan proposal ('RPMP', 'proposal') and acknowledge the work that has been put into its preparation. This minute sets out some key questions that have arisen from the review of the officer's report and submissions to date, and which will assist us with our consideration of the proposal.
3. We also issue a further directions as to the scheduling of a hearing day for the Council's response to submissions and evidence.

KEY MATTERS ARISING

4. We set out below our key questions arising from the review of submissions and the officers report to date. This is not intended to be an exhaustive list and we are likely to have further questions that may be addressed in the course of the hearing. However the following questions will assist both the Council and submitters in their preparation for the hearing. It does not limit the matters on which either the Council or submitters may present.
 - a. For mothplant, can a Cost Benefit Analysis be prepared for mothplant to be moved from an Organism of Interest to Progressive Containment, particularly for urban areas in the Region?
 - b. Why are feral rabbits not included as a pest in the Site-led Programme (refer to Table 11, pg78, of Proposed RPMP).
 - c. What would the rules be for a Feral Goat Coordinated Management Area if it were to be included as a programme in the Proposed RPMP.
 - d. Can staff consider including hornwort as a pest under the Site-led Programme?
 - e. As an alternative to Old Man's Beard control along the Ruahine and Kaweka Ranges, what control of other organisms may provide "better value"?
 - f. Can staff review Mana Whakahono a Rohe arrangements and consider whether any aspects are appropriate for Iwi consultation processes in the Proposed RPMP development?

- g. The Panel recommends that Sections 2.1 -2.5 and Figures 2-5 be reviewed to include Iwi initiatives/mauri.
- h. Amend Section 7.1 to include Organisms of Interest for reporting annually.
- i. Nassella tussock appears to be omitted from Plan Rule 5.
- j. Panel suggests an improvement for layout is to include the objective text within the objective heading box. For example:

Objective 3

Over the duration of the Plan, where possible, eradicate possums within those areas identified as Possum Eradication Areas in accordance with the Hawke's Bay Regional Possum Control Technical Protocol (PN 4969), to minimise adverse effects on environmental values and economic well-being within the Hawke's Bay region.

- k. The panel recommends that within Section 2.3, commentary is made on biological control research and investigation (e.g. calamint SFF funding announcement, 9 July 2018).
 - l. Submitter 20.19 makes reference to illegal releases of pigs/deer. Can staff elaborate on what action Council would take and using what statutory powers?
 - m. Submitter 22 refers to Possum Control Areas involving land less than 4 ha. Can staff comment on obligations of properties less than 4 ha within a PCA?
 - n. Submitter 24.12 sought inclusion of mice in Site-led Programmes. Can staff elaborate on reasons why mice are not included?
 - o. Can staff confirm that Council has validated funding proposed in the RPMP via the 2018/2019 Annual Plan?
 - p. With reference to Section 9.5, the Panel recommends that 10 years of anticipated /budgeted expenditure be shown.
 - q. In relation to programmes for phytosanitary purposes, how many written directions have been served on occupiers in breach of Plan Rule 14 (or equivalent rule under the current Regional Phytosanitary Pest Management Strategy)?
 - r. Can staff provide the Register of Exemptions to Plan Rules granted under the Regional Pest Management Strategy (HBRC Plan Number 4466)?
5. We direct the Council respond to the questions in writing and to make this available by **5pm 30 July 2018**. A copy of the response will be placed on the website for submitters on the following link <https://www.hbrc.govt.nz/services/pest-control/biosecurity/pest-management-plan-review/>.

COUNCIL REPLY HEARING DAY

- 6. We note that the following additional hearing day will be scheduled to hear the Council's reply:

Time: 8.30am

Date: 3 August 2018

Location: Hawke's Bay Regional Council Chambers, 159 Dalton St,
Napier

7. This will be held in public and submitters are welcome to attend and hear the presentation from Council officers.

ISSUED by the Hearing Panel

DATE 20 July 2018

Hawke's Bay Regional Council
Proposal for Hawke's Bay Regional Pest Management Plan

pursuant to the Biosecurity Act 1993

MINUTE AND DIRECTIONS OF HEARING PANEL

[Minute 3]

INTRODUCTION

1. The Biosecurity Act 1993 (**BSA**) provides a step by step process which must be followed in the preparation of a regional pest management plan.
2. The Council directed that the Proposal be publicly notified on 2 February 2018 for a period of submissions until 16 March 2018, followed by a hearing of submissions received.
3. The Hearing Panel completed the First and Second steps of the plan making process by resolving on 18 May 2018 that it was:
 - a. Satisfied that section 70 of the BSA has been complied with in relation to the Proposed Hawke's Bay Regional Pest Management Plan (**the Proposal**); and
 - b. Satisfied of the matters in section 71 of the BSA in relation to the Proposal.
4. The hearing on submissions then took place over the course of 3 hearing days. Council staff gave an opening presentation on 5 July followed by presentations by submitters on 5 and 6 July. Council staff gave a reply presentation on 9 July.
5. Following the hearing we asked Staff to provide us with a response to questions outlined in Minute 2. Staff spoke to their response on 3 August 2018.
6. This Minute now addresses the Third and Fourth steps of the plan making process as set out in sections 72 and 73 of the BSA:
 - a. Third Step: satisfaction with consultation or requirement of more consultation; and
 - b. Fourth Step: approval of preparation of plan and decision on management agency.
7. The Fifth and Sixth steps (as relevant to the Hearing Panel) will be addressed in the Panel's written recommendations report.

THIRD STEP: SATISFACTION WITH CONSULTATION

10. Under section 72(1) of the BSA we are required to be satisfied:
 - (a) *that, if Ministers' responsibilities may be affected by the plan, the Ministers have been consulted;*

- (b) *that, if local authorities' responsibilities may be affected by the plan, the authorities have been consulted; and*
 - (c) *that the tangata whenua of the area who may be affected by the plan were consulted through iwi authorities and tribal runanga; and*
 - (d) *that, if consultation with other persons is appropriate, sufficient consultation has occurred.*
11. The consultation undertaken prior to the public notification of the Proposal is summarised in Section 2.6 of the Proposal. A summary of consultation was also provided in the Staff Recommendations Report that we received prior to the hearing.
 12. A discussion document was released in June 2017 on the future of pest management in Hawke's Bay. The purpose of the discussion document was to seek the community's views on the best approaches to be taken in a new regional pest management plan. The Council received a total of 98 feedback responses.
 13. The Proposal was publicly notified on 2 February 2018 for a period of submissions closing on 16 March 2018. A total of 51 submissions were lodged on the Proposal and 12 submitters attended the hearings to speak to their submission, a number with multiple speakers.
 14. We address each of the requirements of section 72(1) below.

Consultation with Ministers

15. The responsibilities of the Minister for Primary Industries, the Minister of Conservation and the Minister of Land Information may be affected by the plan.
16. Each of these Ministers were consulted with prior to the public notification of the Proposal.
17. Following public notification of the Proposal, the Ministry for Primary Industries (**MPI**) and the Director-General of Conservation (**DOC**) lodged submissions on the Proposal. Staff have liaised further with MPI and DOC. These Ministries have also been given the opportunity to make comment on key programmes on technical and workability matters.
18. We are satisfied, in accordance with section 72(1)(a) that the Ministers whose responsibilities may be affected by the Proposal have been consulted.

Consultation with local authorities

19. The responsibilities of local authorities in Hawke's Bay and neighbouring regions may be affected by the plan. Key programmes were discussed prior to the public notification of the Proposal as set out in the Staff Recommendations Report.
20. Local authorities and neighbouring Regional Councils were notified as key stakeholders during the public notification process of the Proposal.
21. We are satisfied, in accordance with section 72(1)(b) that the local authorities whose responsibilities may be affected by the plan have been consulted.

Consultation with tangata whenua

22. A Biosecurity Working Party, consisting of three councillors and three appointed members of the Regional Planning Committee, was formed in the initial stages of the Regional Pest Management Plan review. The Working Party was responsible for considering and providing recommendations to staff on the Regional Pest Management Plan review process and key issues, including guidance on the development of the discussion document, Proposed Plan and advice on how to best consult with Māori.
23. The Biosecurity team presented both the discussion document and the Proposed Plan to the Māori Committee, and updated them on key items of interest and the process of engagement.
24. Three emails were sent specifically to the Regional Policy Committee, Māori Committee and Post Settlement Governance Entities, one advertising the release of the discussion document for public consultation, one offering to meet with interested parties in person to discuss the Regional Pest Management Plan review and a final email advertising the release of the Proposed Plan for public consultation.
25. This third email resulted in interest in the Proposed Plan and as a result a hui was held at Peak House, Te Mata Peak on 5 March where Hawke's Bay Regional Council staff attended and presented. This hui was organised by Tangata Whenua Hawke's Bay.
26. Following public notification of the Proposal, Ngāti Pahauwera Development Trust, Tangata Whenua Hawke's Bay and Maungaharuru Tangitū Trust lodged a submission on the Proposal.
27. We are satisfied, in accordance with section 72(1)(c) that the tangata whenua of the area who may be affected by the plan have been consulted.

Consultation with other persons

26. In considering whether we are satisfied that sufficient consultation has occurred with other persons as required by subsection (1)(d), the Panel must have regard to the following matters under section 72(2) of the BSA:
 - (a) *the scale of the impacts on persons who are likely to be affected by the plan; and*
 - (b) *whether the persons likely to be affected by the plan or their representatives have already been consulted and, if so, the nature of the consultation; and*
 - (c) *the level of support for, or opposition to, the proposal from persons who are likely to be affected by it.*
27. A discussion document was released in June 2017 discussing the future of pest management in Hawke's Bay. The purpose of the discussion document was to seek the community's views on the best approaches in a new regional pest management plan. Details have been provided in the Staff Recommendations Report.
28. Further opportunity for feedback has also been provided through the public notification of the Proposal where the community has had an opportunity to submit on the proposal and speak to their submission at the hearing.
29. We have considered the scale of impacts of the proposed plan, which are wide ranging across the region. The impacts affect a range of stakeholders and we had

submissions both in support, and in opposition to some of the pests included in the plan. We received helpful input from the public for identification of new pests, as well as organisms of interest. Staff were able to respond to those submissions and refine the Proposal.

30. Given the wider ranging scale of impacts, we are satisfied that undertaking notification and carrying out hearings enabled us to consider those impacts, and that the public generally, as well as those directly affected, had an opportunity to take part in an open and public process.
31. Having regard to the matters set out in section 72(2) of the BSA, we are satisfied that the requirements of section 72(1)(d) have been met and sufficient consultation has occurred with other appropriate persons.

Whether issues raised in all the consultation undertaken on the Proposal have been considered

32. We are also required to be satisfied under section 73(1) of the BSA that all issues raised in all the consultation undertaken on the Proposal have been considered.
33. As set out in Section 2.6 of the Proposal, issues raised during consultation have been used by staff to help guide the development of the RPMP Proposal.
34. Following notification of the Proposal we directed Council staff to prepare a report containing:
 - a. A summary of the key themes raised in submissions;
 - b. A summary of the submissions received on the Proposal highlighting key issues raised in submissions, including staff recommendations in response to each submission.
 - c. An assessment against the consultation requirements in section 72 of the BSA.
35. This Staff Report was provided to us on 21 June 2018 and made available on the Council's website.
36. We have carefully considered the issues raised in submissions together with the evidence lodged, oral presentations, written comments and any further matters raised at the hearing.

Conclusion on consultation

38. We are satisfied that the consultation required by section 72(1) has occurred and that all of the issues raised in all the consultation undertaken on the Proposal have been considered in accordance with section 73(1).

FOURTH STEP: APPROVAL OF PREPARATION OF PLAN AND DECISION ON MANAGEMENT AGENCY

Approval of preparation of plan

39. Having been satisfied that the consultation required by section 72(1) has occurred and that all of the issues raised in all the consultation undertaken on the Proposal have been considered as required by section 73(1), the Panel may now approve the preparation of a plan. We make directions below for the Staff to prepare a draft plan in accordance with sections 73 and 74 of the BSA. This draft plan will be provided to the Panel for the Panel to make its final recommendations on the Plan.

Management Agency

40. Having approved the preparation of a plan, the Panel must apply section 100 of the BSA to decide which body is to be the management agency. Under section 100(1), the management agency specified in a plan must be a department, a council, a territorial authority or a body corporate.
41. In deciding which body is to be the management agency, the Hearing Panel must take the following into consideration:
- (a) *the need for accountability to those providing the funds to implement the plan; and*
 - (b) *the acceptability of the body to –*
 - (i) *those providing the funds to implement the plan; and*
 - (ii) *those subject to management provisions under the plan; and*
 - (c) *the capacity of the body to manage the plan, including the competence and expertise of the body's employees and contractors.*
42. It is proposed that Hawke's Bay Regional Council will be the management agency responsible for implementing the Proposal and the resultant Plan because:
- (a) Hawke's Bay Regional Council is accountable to the Plan funders, through the requirements of the Local Government Act 2002;
 - (b) It has implemented previous regional pest management strategies; and
 - (c) It has the capacity, competency and expertise to implement the Plan.
43. Following consideration of the matters set out in section 100 we determine that Hawke's Bay Regional Council be the management agency for the plan.

DIRECTIONS

Draft Hawke's Bay Regional Pest Management Plan

44. The Panel directs Council staff to prepare a draft Hawke's Bay Regional Pest Management Plan in response to matters raised in submissions. The draft Plan must:
- a. Specify the matters set out in section 73(3) of the BSA;
 - b. May contain the matters set out in section 73(4) to (6) of the BSA; and
 - c. Must meet the requirements of section 74 of the BSA.

45. The Panel also directs that staff:
- a. Incorporate recommendations made by Staff in response to Hearing Panel Minute 2 with the addition of the following:
 - i Inclusion of a wilding conifer programme and good neighbour rule;
 - ii Inclusion of a feral goat coordinated management area programme and good neighbour rule;
 - iii Inclusion of an old man's beard programme along the Kaweka and Ruahine Ranges and good neighbour rule;
 - iv Inclusion of hedgehogs as a site-led pest;
 - v Move yellow bristle grass from exclusion to sustained control;
 - vi Increase possum residual trap catch requirement for the good neighbour rule from 4% to 5%;
 - b. Amend draft Plan as per Hearing Panel decision in the Hearing Panel Recommendations on Submissions report (Appendix 1).
 - c. Make any minor corrections or drafting clarifications that staff consider necessary.
46. The draft Hawke's Bay Regional Pest Management Plan is to be provided to the Hearing Panel by **5pm, 10 October 2018**, accompanied by the Staff Report and cost benefit analysis as set out below.

Staff Report

47. Council staff are directed to prepare a Staff Report containing:
- a. An assessment of the draft Plan against the matters specified in section 73 of the BSA;
 - b. An assessment of the draft Plan against the requirements of section 74 of the BSA; and
 - c. Address any recommended changes to be made to funding provisions in the RPMP.
48. Council staff are also directed to update the cost benefit analysis, reflecting the changes made to the Plan.
50. The Staff Report is to be provided to the Panel by **5pm, 10 October 2018** and made available on the Council's website.
51. Once the Panel receives the draft Hawke's Bay Regional Pest Management Plan, Staff report and updated cost benefit analysis, it will commence its final deliberations before providing its recommendations to the Council.

ISSUED by the Hearing Panel

10 September 2018