

11.3 Consultation Regarding Te Pāhou Reserve

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Author: Simon Collett, Manager: Commercial Property
Alicia Oldham, Team Leader: Strategic and Commercial Property

Authoriser: Barbara Dempsey, General Manager: Community Services

PURPOSE OF THE REPORT

1. This memorandum seeks direction on the future legal ownership of the Council-owned land known as the Te Pāhou Reserve following requests from hapū dating back 2000 to return the land.
2. A Council decision is sought on:
 - an in principle decision to transfer ownership of the land to hapū
 - the disposal classification for the property under the Property Acquisitions and Disposals Policy
 - progressing the process of public consultation for the proposal

RECOMMENDATIONS

That the Council:

- (a) Resolves that the disposal of Te Pāhou Reserve be classified as a Strategic Disposal in accordance with Council's Property Acquisitions and Disposals Policy 2021, noting that:
 - i. the possible disposal to hapū would achieve strategic cultural objectives and acknowledges that Te Pāhou is a highly significant cultural heritage site with historical, spiritual, and ancestral values that connect hapū directly with Te Pāhou; and
 - ii. the terms and conditions of any proposed disposal of Te Pāhou Reserve will be presented to Council for approval prior to entering into a sale and purchase agreement.
- (b) Proceed with the process of public consultation for disposal of a park under section 138 of the Local Government Act 2002 ("LGA"); and
- (c) Approves in principle the reconnection of the land known as Te Pāhou Reserve to hapū by way of transfer of the land to the Ngāi Te Ahi Settlement Trust ("the Trust") for nil consideration.

EXECUTIVE SUMMARY

3. Te Pāhou Reserve is a Council owned park which was acquired and is still held by Council for recreational reserve purposes.
4. The below aerial photograph highlights:
 - (a) in yellow dashed lines, the recreational land owned by the Tauranga City Council which is the land being considered for possible disposal (“the Reserve Land”); and
 - (b) in orange, the neighbouring urupā:



5. Ngāi Te Ahi and Ngāti Hē have an ongoing interest in the Reserve Land, as it surrounds their urupā. Ngāi Te Ahi has made several representations to Council since 2000 asking for Council to consider returning ownership of the Reserve Land to the hapū. The main reasons for the request are the strong cultural and historical links to the site and poor access to the existing urupā.

BACKGROUND

6. Prior to European settlement, Te Pāhou was recognised as a Pā and Kāinga — a new residence for the Ngāi Te Ahi community, closely affiliated with the hapū of Ngāti Hē and Ngāti Ruahine. As years passed, the region was systematically settled, leading to the establishment of multiple Kainga and adjacent Marae. The land historically referred to as Te Pāhou spanned a much broader area than what is being discussed for potential disposal in this document.
7. The tract of the Reserve Land under consideration for disposal is part of the “Hairini Block”, which was a larger block of land encompassed in the confiscation under the Tauranga District Lands Act of 1867. The initial title record for the Hairini 1A 527A Block was documented in 1886. Subsequently, a Native Land Court Partition Order in 1924 vested the land, now known as the Te Pāhou Reserve, to several Māori owners in various parcels.
8. Raymond Kenneth Phelps and Te Aouru Smith (“the Former Owners”) acquired (separately) parcels of this partitioned land from the aforementioned Māori owners.
9. Following Mr Phelps death, Council purchased the parcel of land owned from Phelps’ executors in 1981. In 1982 Council purchased the parcel owned by Mr Smith.
10. Council used the low-lying area on the western side of the intersection of Hammond Street and Welcome Bay Road to dump soil and other road construction refuse. The land was also grazed. This contributed to erosion on the fill batter leading down from the upper roadway level.
11. The government and local authority pinpointed this area as a crucial node for traffic management. Council and Waka Kotahi entered into agreements to record the Crown’s

acquisition of parts of the land to enable construction of the Hairini Link – Stage 4 (“the Project”) over parts of the Reserve Land. The physical works aspect of the Project has been completed and Waka Kotahi are now completing the final legalisation works to declare the land acquired as road.

12. The culmination of the Hairini Link Project has made the reduced remaining segments of this culturally significant Reserve Land accessible for potential reconnection with the hapū.
13. The proposal has been discussed with Council’s internal asset managers and, if the transfer proceeds, easements will be required to protect existing stormwater ponds and water infrastructure to ensure on-going rights of access to the infrastructure is preserved.
14. The Reserve Land is zoned in the City Plan marked as "Passive Open Space." Owing to its positioning to the implemented major traffic routes, its suitability for public accessibility and its recreational potential is now limited.
15. While the Reserve Land is not classified as reserve under the Reserves Act, it is, however, included in Council’s Tauranga Reserves Management Plan 2019 (“TRMP”), and is categorised as a Heritage Reserve. As the Land is not held under the Reserves Act, the status of the TRMP is a non-statutory guiding policy document. The TRMP indicates that Council will consider the options for land ownership of Te Pāhou Reserve once the new land parcels are created and returned to the Council from the Waka Kotahi, following completion of the Hairini Link.
16. Ngāi Te Ahi submitted to elected members on the urupā and Te Pāhou Reserve again in August 2017 with an onsite presentation.
17. As per the response to the submission of Ngāi Te Ahi and Ngāti Hē hapū to the 2018 Long-Term Plan, Council advised they would consider the options for land ownership of Te Pāhou Reserve upon completion of the Hairini Link Project.
18. The legalisation of new land parcels is nearing completion. Accordingly, now is the appropriate time to consider options for the reconnection of hapū with the Reserve Land, subject to consideration of relevant council policy and legislation.
19. The Reserve Area and wider surrounds hold significant cultural value for the hapū, especially given its proximity to their urupā. During pre-European periods, numerous burials were conducted in repo (wetlands and swamps), where bodies were buried with limited tools. This was a conventional method for the times. One such wetland area is situated around the base of the Te Pāhou urupā, meaning the burial sites included both the high grounds and the lower wetlands (the land in discussion in this report). While these wetlands were often perceived as obstacles to development, they were cherished resources for the residents of Te Pāhou and surrounds.
20. Ngāi Te Ahi and Ngāti Hē have confirmed their preference for the Reserve Land to be conveyed to the Trust.

APPLYING THE PROPERTY ACQUISITIONS AND DISPOSALS POLICY (“PADP”)

21. Before proceeding with the transfer of the Reserve Land, council must classify the Reserve Land as either:
 - (a) Surplus - Property that has been reviewed from a whole of organisation perspective and assessed as no longer required for strategic or operational purposes; or
 - (b) Atypical – A unique property, which has a lack of similar sales to inform market value assessments, or a property with a range of uses (all with a significant range of values), or a property which has a different value for a sub-section of the market than it does for the market as a whole; or
 - (c) A Strategic Disposal - Disposal of property for the purposes of achieving strategic or operational outcomes for the community.

22. When classifying a property for disposal, Council must undertake three steps, these are addressed by the following sections.

Step 1: Assessment

23. Council must assess three key elements: its statutory and legal obligations, whether the purpose of the sale is to achieve strategic objectives, and if the property is suitable for an open market sale process.

Pre-existing statutory or legal obligations

24. Council's pre-existing statutory or other legal obligations in relation to the Reserve Land is discussed at the Legal Implications/Risks section of this report.

Strategic Objectives

25. The transfer of the Reserve Land would seek to achieve the site-specific strategic objective of reconnecting hapū with the Reserve Land which:

- (a) addresses the long-standing request the hapū have made to Council to be reconnected with the Reserve Land;
- (b) acknowledges hapū strong cultural ties to the Reserve Land, with specific recognition of the proximity of the Reserve Land to their urupā which is the neighbouring parcel of land; and
- (c) Recognises the principle of partnership between the Council and hapū being a well-established principle in Treaty jurisprudence. Note section 4 of the Local Government Act 2002 which provides Council has a role in ensuring the Crown's responsibility to take appropriate account of the principles of the Treaty of Waitangi is recognised and respected.

Suitability for an Open Market Sale Process

26. The ecology of the Reserve Land and the presence of significant Council infrastructure throughout means that the Reserve Land's suitability for development or amenity is limited. Given the unique and significant cultural objectives which could be achieved through a direct transfer of the land to hapū, we consider that an open market process is not suitable for this parcel of land.

27. The PADP requires that once the above assessment has been made (as discussed in paragraph 23-26 above), Council will, as soon as reasonably practicable, notify Mana Whenua of the details of the property being considered and a summary of the assessment undertaken. This step has taken place over the last several years, with Council making the commitment to hapū that they would consider the options for land ownership of Te Pāhou Reserve upon completion of the Hairini Link Project. If the property is not subject to pre-existing statutory or other legal obligations, Council staff are required under the PADP to meet with Mana Whenua within 30 days of giving the above notice and engage in good faith to ensure any cultural matters have been appropriately identified and considered in the assessment and to receive any comments Mana Whenua may have in respect to the possible classification of the property. It is considered the PADP requirements in respect of *Engagement with Mana Whenua on Cultural Matters* have been satisfied. The hapū detailed articulation of the Reserve Land's significance during multiple hui and site presentations emphasises the value of a strategic disposal in this case. This is particularly relevant for the following reasons which have come direct from hapū:

- (a) **Cultural and Ancestral Connection:** Te Pāhou is intricately linked to the history and culture of Ngāi Te Ahi. It is a place where their ancestors, including Ngāti Hē individuals, were and continue to be laid to rest with their whānau and matua tupuna. The process of interment of their own people in this wāhi tapu (sacred place / site) signifies a deep personal and ancestral connection that anchors them to Te Pāhou, Hairini and Ngāti Te Ahi.

- (b) **Ecological and biodiversity values:** Te Pāhou has intrinsic associations with the Kaitemako Stream and Te Tāhuna o Tehe me Te Tāhuna o Rangataua. These are the most eastern tāhuna o Tauranga Moana that binds us directly to our Moana whanaunga.
- (c) **Historical Significance:** The site is associated with historical events that are integral to the identity and heritage of Ngāi Te Ahi.
- (d) **Preservation of hapū tūrangawaewae:** The urupā site plays a significant role and association in preserving the ongoing traditions of interment for Ngāi Te Ahi whānau and the ongoing cultural significance of the site with the surround cultural landscape.
- (e) **Cultural Heritage and Spiritual Significance:** Te Pāhou is part of the cultural heritage and identity of Ngāi Te Ahi. The site's connection to the burial customs and rituals of the hapū, contributes to our sense of identity and belonging in the region. This spiritual aspect adds to its importance within Ngāi Te Ahi and Ngāti Hē belief system.
- (f) **Community Amenity:** Te Pāhou provides a cultural amenity for the local Hairini, Ohauti, Maungatapu and Welcome Bay communities and is recognised in the Tauranga City plan as a significant Māori site M30 in the Heritage provisions in Chapter 7 and Appendix 7B Register of Significant Māori Areas.

28. A copy of hapū cultural narrative is included in this report as Attachment 1.

Step 3: Classification

29. Following completing an assessment of the property and engaging with Mana Whenua, Council classifies the property via Council resolution. Once Council has classified the disposal type, Mana Whenua will be advised within 30 days of the Council resolution.

30. This report recommends that the Te Pāhou Reserve is classified as a strategic disposal subject to public consultation in accordance with the requirements under s138 of the Local Government Act. This recommendation is discussed further in the Options Analysis of The Local Government Act sections of this report.

OPTIONS AND RECOMMENDATIONS

Disposal classification

Option one: Classify the disposal of the Reserve Land as a Strategic Disposal: **RECOMMENDED**

Advantages	Disadvantages
<ul style="list-style-type: none"> • Ensures the delivery of key strategic cultural outcomes. • Strategic disposals allow for desired outcomes to be non-financial in nature. • Recognises the historical and cultural connections hapū have to the land. • Acknowledges the role that hapū have in building, protecting, and celebrating Tauranga. 	<ul style="list-style-type: none"> • There is some reputational risk to Council as this will be negatively perceived by some people in the Community.

Option two: Classify the disposal of the Reserve Land as an atypical disposal or surplus property: **NOT RECOMMENDED**

Advantages	Disadvantages
<ul style="list-style-type: none"> • Provides greater flexibility regarding the terms of any sale and purchase agreement, as Council will not be prioritising the achievement of strategic outcomes via the sale. • May result in a financial benefit to Council. 	<ul style="list-style-type: none"> • Council has no control (or less control) over the strategic outcomes of the sale, as these are not prioritised via the property classification. • Surplus property must be sold at market value which may limit cultural objectives being met through the disposal.

DIVESTMENT APPROACH

Option One: Transfer the land at nil consideration to the Ngāi Te Ahi Settlement Trust
RECOMMENDED OPTION

Advantages	Disadvantages
<ul style="list-style-type: none"> • Ensures delivery of meeting cultural objectives. • Strengthens the relationship between the hapū and Council. • Recognises the long-standing aspirations of hapū to have management and influence over the land neighbouring their urupā. • The Reserve Land holds limited developable potential (due to zoning and its ecological state). • Transfer will result in a long-term financial benefit to the community as ownership of the site will sit with the Trust. • Aligns with principles of Te Tiriti o Waitangi. 	<ul style="list-style-type: none"> • Requires Council to enter into a non-competitive divestment, which may potentially expose Council to criticism. • There is some reputational risk to Council as this will be negatively perceived by some people in the Community.

Option Two: Council to Retain Reserve Land **NOT RECOMMENDED**

Advantages	Disadvantages
<ul style="list-style-type: none"> • Avoidance of potential negative sentiment from a small sector of the community. 	<ul style="list-style-type: none"> • Does not recognise the hapū aspirations for the land and does not strengthen Council’s relationship with hapū. • Missed opportunity to reconcile longstanding requests from hapū to Council for reconnection to the Reserve Land. • Sole financial and management responsibility will continue to lie with Council • Public amenity and value of the Reserve Land will remain low.

LEGAL IMPLICATIONS/RISKS

31. Council sought legal advice in relation to its obligations under Section 40 of the Public Works Act 1981 (“PWA”) when it is considering a disposal, to offer the Land to the Former Owner from whom Council acquired the Land from. The advice set out that:
- (a) the Land is held for a public work, namely for recreational purposes; and
 - (b) two valid exceptions to s40 offer back requirements give Council a basis not to offer back the Land to the Former Owners as follows:
 - i. there has been a significant change in the character of the Land (s 40(2)(b)); and
 - ii. due to the size, shape and situation to dispose of the Land to the owner of the adjacent land (s 40(4)).

32. There is some risk that the Former Owners or their successors could make a claim that the Reserve Land should be offered back to them. Council has a valid basis not to offer the Land back to the Former Owners or their successors as there has been a significant change in the character of the Reserve Land resulting from the creation of the State Highway intersecting with the Reserve Land. Accordingly, the exception in s 40(2)(b) applies.
33. The Reserve Land is considered a park in accordance with s138 of the LGA. Section 138 records that Council must consult on the proposal to dispose before it sells or otherwise disposes of, or agrees to dispose of, the park or part of the park.

OTHER CONSIDERATIONS

Road Stopping

34. We have identified that the legal owner of the Reserve Land could make an application to Toitū Te Whenua Land Information New Zealand to stop and amalgamate this neighbouring parcel with the Reserve land. This is a separate statutory process to the legalisation work Waka Kotahi are currently completing which can be completed by an adjoining owner to this parcel.



Possible Works Program

35. Hapū have expressed a desire to work with Council and other key stakeholders to continue and build upon the restoration works on the Reserve Land. Waka Kotahi have partnered with hapū to actively progress some wetland enhancement and creation works on the Reserve Land which has had a positive impact on the ecology of the Reserve Land. This work involves:
- Vegetation clearance of pest plant species on parts of the sites;
 - Restorative planting in compliance with Tongaparaoa and Te Pāhou Wetland Ecology and Cultural Restoration Plans submitted as part of the Resource Consent for the Project Works;
 - Maintenance of plantings on the Sites during a two-year period after Waka Kotahi achieved 90% of the native vegetation cover (the Maintenance Period”) including plant pest control; and
 - Installation and checking of traps for animal pest control during the Maintenance Period.

36. While reconnection of the Reserve Land back to hapū is a main objective in a possible disposal to hapū, conversations with hapū has highlighted that further restorative works are desirable. These possible restoration works would be carried out in consultation with Council.

CONSULTATION / ENGAGEMENT ON DISPOSAL OF THE RESERVE LAND

37. Consultation on disposal of the Land is required in accordance with s138 of the LGA and Part B, Clause 10.9.2 of the TRMP.
38. The type of engagement is directed by Council's Significance and Engagement Policy 2020.
39. Depending on the assessment, the engagement will likely comprise of the following:
- (a) Public notice to dispose of the Reserve Land in a print newspaper twice over one calendar month;
 - (b) Notice on 'Public Notices' section of Council's website;
 - (c) Letter drop to residents in the immediate vicinity of the Reserve Land; and
 - (d) Any feedback received will be followed up by a Council representative.
40. All feedback will then be collated and reported back to Council following the consultation.
41. Council may wish to hear from people who want to provide feedback in person, but this is not expressly required by section 138 of the Local Government Act nor the TRMP.

SIGNIFICANCE AND ENGAGEMENT

42. The Local Government Act 2002 requires an assessment of the significance of matters, issues, proposals and decisions in this report against Council's Significance and Engagement Policy ("SAEP"). Council acknowledges that in some instances a matter, issue, proposal or decision may have a high degree of importance to individuals, groups, or agencies affected by the report.
43. In making this assessment, consideration has been given to the likely impact, and likely consequences for:
- (a) the current and future social, economic, environmental, or cultural well-being of the district or region
 - (b) any persons who are likely to be particularly affected by, or interested in, the decision.
 - (c) the capacity of the local authority to perform its role, and the financial and other costs of doing so.
44. In accordance with the considerations above, criteria and thresholds in the SAEP, it is considered that the decision is of medium significance, as the proposed transfer:
- a) is not a 'strategic asset' as defined under Council's SAEP but is still a transfer of a Council asset;
 - b) there is likely moderate public interest in the sites transfer given:
 - i. the Reserve Land's ecology is made up of a majority of wetland, with limited public amenity;
 - ii. the limited public amenity is amplified by the poor access ability given its location is in the middle of a busy intersection (as a result of the Hairini Link State Highway Project); and
 - iii. the land is currently included in the TRMP and will be removed as a result of this proposed transfer.
45. Taking into consideration the above assessment, that the proposed transfer is of medium significance, officers are of the opinion that the further engagement process specified at points 39-43 is required prior to Council making a decision.

NEXT STEPS

46. If the proposal to return the Reserve Land to hapū for nil consideration is supported in principle, staff will complete the public consultation required in accordance with s138 of the LGA to inform a final report back to Council in 2024.

ATTACHMENTS

1. **Ngāi Te Ahi Cultural Narrative - A15305918**  

Te Riu o Te Pahou.

Te Pahou is a highly significant cultural heritage site with historical, spiritual, and ancestral values with the physical connections to Ngāi Te Ahi. The urupā site and adjoining land have been significantly devastated and affected by the growth and development of Tauranga City through the construction of the cities transport network that has severed Te Pahou from its whānau and communities of interest. Te Pahou is one of the three Ngāi Te Ahi urupā (final resting places) for our whānau. The other two hapū urupā are known as Waitaia on Tutauanui Crescent and the Poike urupā on College Place, Poike.

Ngāi Te Ahi people transformed the Te Pahou spur into a traditional trench Pa site¹ that overlooked the Kaitemako Stream, across Te Tāhuna o Te Tehe to Te Tokitoki Pa, and Te Tāhuna o Rangataua. Te Pahou was one of the many traditional pa sites that formed the defensive network of Pa sites that held the high ground around the Maungatapu peninsula.

Ngāi Te Ahi trace their ancestry directly to Ngāti Ranginui / Tākitimu waka through their tipuna whaea a Ngariunga (Ngāti Ruahine) and her union with Tamahika from Ngāti Ngāranui / Ngāti Tamahika / and Whakaue (Te Arawa).

Te Pahou, is situated at the Hairini roundabout at the intersection of Hairini Street, State Highway 29 and Welcome Bay Road), holds strong associations to Hairini Marae and the Ngāi Te Ahi hapū. It also serves as the final resting place for numerous Ngāti Hē individuals / whānau who share close kinship with Ngāi Te Ahi through intermarriage.

Te Pahou holds significant importance to Ngāi Te Ahi for several reasons, as inferred from the provided information:

1. **Cultural and Ancestral Connection:** Te Pahou is intricately linked to the history and culture of Ngāi Te Ahi. It is a place where their ancestors, including Ngāti Hē individuals, were and continue to be laid to rest with their whānau and matua tupuna. The process of interment of their own people in this wāhi tapu (sacred place / site) signifies a deep personal and ancestral connection that anchors them to Te Pahou, Hairini and Ngāi Te Ahi.
2. **Ecological and biodiversity values,** Te Pahou has intrinsic associated with the Kaitemako Stream and Te Tāhuna o Tehe me Te Tāhuna o Rangataua. These are the most eastern tāhuna o Tauranga Moana that binds us directly to our Moana whanaunga.

¹ Phillips, K, Archaeological Survey and Assessment of Effects: Proposed State Highway 29/Welcome Bay Road Intersection Capacity Improvements Tauranga, January 2005.

3. **Historical Significance:** The site is associated with historical events that are integral to the identity and heritage of Ngāi Te Ahi.
4. **Preservation of hapū tūrangawaewae:** The urupā site plays a significant role and association in preserving the ongoing traditions of interment for Ngāi Te Ahi whānau and the ongoing cultural significance of the site with the surround cultural landscape.
5. **Cultural Heritage and Spiritual Significance:** Te Pahou is part of the cultural heritage and identity of Ngāi Te Ahi. The site's connection to the burial customs and rituals of the hapū, contributes to our sense of identity and belonging in the region. This spiritual aspect adds to its importance within Ngāi Te Ahi and Ngāti He belief system.
6. **Community Amenity:** Te Pahou provides a cultural amenity for the local Hairini, Ohauti, Maungatapu and Welcome Bay communities and is recognised in the Tauranga City plan as a significant Māori site M30 in the Heritage provisions in Chapter 7 and Appendix 7B Register of Significant Māori Areas.
Link: http://econtent.tauranga.govt.nz/data/city_plan/ch/7/appendix_7b.pdf

Ngā wāhi tūturu o Ngāi Te Ahi traditional sites of significance located and associated with Te Pahou.



7. **Tongaparaoa:** Te Riu o Te Pahou is connected to the development of Te Papa Takaro o Tongaparaoa being the Illa Place playground, public reserve and Scout Hall. The use of the name Tongaparaoa for

the playground reflects the hapū associations as traditional area of occupation that is nestled below the Pukepoto Pa site (Sapphire Dr) and Te Pahou.

These cultural narratives and associations were included in the Ngāi Te Ahi submission to include Te Pahou as SMA 30 in the schedule of Significant Māori Areas in the Tauranga District Plan review in 2008 / 2009.