

#### 49. STAFF RECOMMENDATION FOR ROLLOVER OF BANKS PENINSULA DISTRICT COUNCIL EXISTING DESIGNATION AT BIRDLINGS FLAT



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| <b>General Manager responsible:</b> | General Manager Strategy & Planning Group DDI 941-8281 |
| <b>Officer responsible:</b>         | Programme Manager District Plan                        |
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##### PURPOSE OF REPORT

1. The purpose of this report is for the Council to consider and make a decision on whether it will confirm the existing Banks Peninsula District Council (BPDC) quarry and waste transfer designation at Birdlings Flat, with or without modifications, impose conditions or withdraw the designation pursuant to section 168A of the Resource Management Act 1991 (the Act).
2. This report also concludes the outstanding decision required on the submission made to this designation. The submission has been previously considered by the hearings panel of the day but has yet to be adopted by the Council.
3. The relevant issues were covered in detail at the previous Council meeting on 23 July 2010 for the 48 other Council designations. This final designation concludes the requirements of the Council to make decisions on its own designations included in the Proposed Banks Peninsula District Plan under Clause 4 of the First Schedule of the Act.

##### EXECUTIVE SUMMARY

4. On 23 July 2010 the Council made decisions on the designations inserted into the Banks Peninsula District Council Proposed Plan (Proposed Plan) pursuant to the First Schedule of the Act. However, a decision was deferred on one of the designations; being the site at Birdlings flat designated for quarry and waste transfer purposes. This designation contains three parcels, RS 41246 and 41247 and Res 2426; totalling just over 10 hectares. The reason for the deferment was that new information regarding the site could not be confirmed at the Full Council meeting. Specifically, there was concern that one of the parcels of the site (Res 2426) may have been the burial location of the Little River Marae.
5. **Appendix 1** contains a report for this remaining BPDC designation. The report reassesses the existing designation, identifies any errors and irregularities, considers the issues together with the submission and makes a comprehensive recommendation to the Council on the designation. Clarification has been sought from the relevant Council officers as to the scope and purpose of designation as well as whether there is ongoing need for the site to be designated. Investigations were undertaken to ascertain whether that part of the site legally described as Res 2426 contains a buried marae. An aerial map of the site is provided in Section 2.1.8 of the attached report (**Appendix 1**). This map identifies the location of the three land parcels that make up the designated site. The location of the buried marae is also shown on this aerial.
6. The investigations confirm that the Little River marae is not buried at this site but is buried nearby in Browns Pit. Browns Pit is located directly opposite the site on a site legally described as Lot 1 DP 8321.

##### Process

7. The Council is the Requiring Authority for the designation considered in this report; it must consider and make a decision on the designation in accordance with the provisions of section 168A of the Act.
8. Once the Council has made a decision on this modified designation, it must serve notice of its decision on the submitter and any landowners and occupiers directly affected by the decision. Sections 173 and 174 of the Act set out the provisions for notification of decisions and appeal rights and provide for any person who has made a submission to appeal the decision of the territorial authority to the Environment Court.

**FINANCIAL IMPLICATIONS**

9. The roll over of existing and proposed new designations forms part of the agreed and current financial year district plan work programme in which internal officers and external consultant cost have been budgeted.

**Do the Recommendations of this Report Align with 2006-19 LTCCP budgets?**

10. Yes. Covered by existing unit budget.

**LEGAL CONSIDERATIONS**

11. There is a legal process for dealing with Councils own existing and proposed new designations to be incorporated in a Proposed Plan.
12. The process, mentioned above, is familiar to the Council and should create no particular risks or liabilities if followed correctly.

**Have you considered the legal implications of the issue under consideration?**

13. Yes, as above.

**ALIGNMENT WITH LTCCP AND ACTIVITY MANAGEMENT PLANS**

14. Aligns with LTCCP 2009-2019, p192: Prioritised programme of plan changes is prepared and approved by the Council on an annual basis; and
15. Aligns with – A prioritised work programme, matched to staff capacity and availability, to be presented for Council approval annually by 30 June of the following financial year.

**Do the recommendations of this report support a level of service or project in the 2006-16 LTCCP?**

16. Yes, see above.

**ALIGNMENT WITH STRATEGIES**

17. No specific alignment with any Council strategies.

**CONSULTATION FULFILMENT**

18. The Proposed Plan has been publicly notified allowing for submissions to be received on the designation under consideration.
19. The designation has been determined by a comparison of the site as it is shown in the relevant Transitional Plan and as it is now shown in the Proposed Plan. Where it was considered appropriate, clarification was sought from the relevant Council officers as to the scope and purpose of designation as well as confirmation of the ongoing need for this site to be designated.

## STAFF RECOMMENDATION

It is recommended that the Council in accordance with clause 9(2) of Schedule 1 and Section 168A of the Resource Management Act 1991 confirm the recommendation made below for the existing quarry and waste transfer station designation of the Banks Peninsula District Council (BPDC) at Birdlings Flat and as set out in the report contained in Attachment 1. The recommendation is to:

1. Confirm the existing designation with modification over the sites legally described as Rural Section 41246 and 41247 at State Highway 75, Birdlings Flat, for the purpose of a quarry and waste transfer station and that the designation be confirmed as shown on planning map R7 of the Proposed Plan, and that the site legally described as Res 2426 be **excluded** as part of the designation subject to:
  - (i) Modifying Appendix II of the Proposed Plan by:
    - (a) Amending the legal description of the designation so that it reads 'Rural Section 41246 and 41247'.
    - (b) Replacing the site area '10.0992' with '7.9230'.
  - (ii) Correcting planning map R7 of the Proposed Plan by amending planning map R7 of the Proposed Plan by replacing the label 'RE' (Refuse Disposal) next to the designation site with the label 'WT' (Waste Transfer Station).
  - (iii) Correcting Appendix II of the Proposed Plan in order to accurately describe the designating authority by amending the name of the Requiring Authority from 'BPDC' to 'CCC'.
  - (iv) Investigating whether there is a need to change the specified 'Gravel' purpose of the Local Purpose Reserve over Res 2426, given the site is no longer used for this purpose.
2. Reject submission 472.27 (Te Taumatū Runanga).

## BACKGROUND

### Process

20. Before notifying a proposed plan, councils are required under Clause 4 of Schedule 1 of the Act, to provide requiring authorities, including itself, that have designations in the operative district plan (which have not expired) with the opportunity to include their existing designations in the proposed plan, with or without modification, and to include new designations.
21. The BPDC included a total of 49 existing and new designations in the Proposed Plan when it was notified on 27 January 1997, for which it acts in the role of Requiring Authority.
22. Of the 49 BPDC designations, 48 were considered and a decision made on each at the 23 July 2010 Full Council Meeting. The designation subject to this report was excluded from the decisions being made on 23 July 2010 due to new information on the site, including concern that an old marae building might be buried on the part of the site legally described as Res 2426. There was the added consideration that the Council was currently using site Res 2426 for stockpiling of land slip debris. An aerial map of the site is provided in Section 2.1.8 of the attached report (**Appendix 1**). This map identifies the location of the three land parcels that make up the designated site.
23. Investigations and discussion with the Council's Landfill Aftercare Officer (David Harris) confirmed that the marae is buried on the site opposite; legally described as Lot 1 DP 8321 (known locally as Browns Pit). The location of the buried marae is shown on the aerial provided in Section 2.1.8 of the attached report (**Appendix 1**).
24. It was also suggested that Res 2426 is currently used for the temporary storage of land slip debris and that the designation should remain for that purpose. Use of the site for stockpiling of slip material during recent flooding has been confirmed. However, this activity is considered to be neither "quarrying" nor "waste transfer station" and is not therefore entirely consistent with the designation purpose.
25. Discussions with Robin Wybrow (Chair of Wairewa Rununga) have confirmed that Res 2426 is Wahi Tapu. It is therefore highly likely that the site was zoned Conservation Reserves for its cultural significance. This is explained in more detail in Appendix 1.

### Assessment and Decisions on Designations

26. As the Council is the Requiring Authority for the designation considered in this report, it must consider and make a decision on it in accordance with the provisions of section 168A of the Act. This section also requires consideration of any submissions received. One submission was received in respect to a quarry designation at Birdlings Flat when the Proposed Plan was notified in 1997. That submission was from Te Taumatu Rununga and related to their objection to mining on Kaitorete Spit and did not relate to this designated site. The submission is assessed in more detail in Section 2.1.5 of the attached report (Appendix 1).
27. In considering the effects on the environment of the requirements, the Council must have particular regard to the following matters set out in section 168A(3) of the Act:
  - (a) *any relevant provisions of—*
    - (i) *A national policy statement;*
    - (ii) *A New Zealand coastal policy statement;*
    - (iii) *A regional policy statement or proposed regional policy statement;*
    - (iv) *A plan or proposed plan; and*
  - (b) *Whether adequate consideration has been given to alternative sites, routes, or methods of undertaking the work if:*
    - (i) *The requiring authority does not have an interest in the land sufficient for undertaking the work; or*
    - (ii) *It is likely that the work will have a significant adverse effect on the environment; and*

- (c) *Whether the work and designation are reasonably necessary for achieving the objectives of the requiring authority for which the designation is sought.*
- (d) *Any other matter the territorial authority considers reasonably necessary in order to make a decision on the requirement.*
28. In accordance with section 168A(4) the Council must make one of the following decisions on the requirement:
- Confirm the requirement
  - Modify the requirement
  - Impose conditions
  - Withdraw the requirement
29. Once the Council has made a decision on this modified designation, it must serve notice of its decision on the submitter and any landowners and occupiers directly affected by the decision. Sections 173 and 174 of the RMA set out the provisions for notification of decisions and appeal rights and provide for any person who has made a submission to appeal the decision of the territorial authority to the Environment Court.
30. The assessment of this modified designation has been limited by the lack of information available and the amount of time that has elapsed since notification of the Proposed Plan in 1997. The BPDC did not provide any documentation, such as assessments of effects or proposed conditions, to support the inclusion of the designation in the Proposed Plan.

Banks Peninsula District Council Proposed District Plan

31. The objectives and policies in respect to designations are set out in Chapter 36 – Utilities of the Proposed Plan. Few other references are made in the Proposed Plan to the use of designations and the statements in Chapter 36 do not demonstrate a robust understanding of the purpose and process of achieving designations through the Act and district plan processes. However, they do indicate general support for the use of designation as a planning tool for larger scale works and services and utility projects. The relevant sections of Chapter 36 are set out below:

*ISSUE*

*Large scale utility projects, works or operations may be more appropriately undertaken in terms of a designation in the Plan rather than through a resource consent.*

*OBJECTIVE*

*To encourage the designation of more significant utilities by network utility operators with requiring authority status.*

*POLICY 2A*

*Utilities of a large scale and capacity, which are not allowed as a permitted or discretionary activity, should be designated.*

*EXPLANATION AND REASONS*

*The designation procedure in Part VIII of the Act makes provisions for public works and network utility operations. Designations are evaluated for the work or project to which they relate and in terms of their impact on the environment.'*

32. The overall objective is to have Council designations updated as a further step to the BPDC Proposed District Plan becoming an operative district plan.